

STATE WATER RESOURCES CONTROL BOARD

PUBLIC HEARING ON AMENDED JOINT PETITION OF THE
IMPERIAL IRRIGATION DISTRICT AND THE SAN DIEGO COUNTY WATER
AUTHORITY FOR APPROVAL OF A LONG-TERM TRANSFER OF CONSERVED
WATER PURSUANT TO AN AGREEMENT BETWEEN IID AND SDCWA, AND
APPROVAL OF CHANGES IN POINT OF DIVERSION, PLACE OF USE AND
PURPOSE OF USE UNDER PERMIT NO. 7643 (APPLICATION 7482).

MONDAY, APRIL 29, 2002
10:00 A.M.

CAL EPA BUILDING
SIERRA HEARING ROOM
SACRAMENTO, CALIFORNIA

REPORTED BY:

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CSR 1564

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1	INDEX	
2		PAGE
3	RESUMPTION OF HEARING:	476
4	AFTERNOON SESSION:	564
5		
6	CALIFORNIA FARM BUREAU FEDERATION	
7	DIRECT EVIDENCE:	
	BY HENRY RODEGERDTS	476
8	CROSS-EXAMINATION	
	BY MR. SLATER	478
9	BY MR. ROSSMANN	486
10	WILLIAM DU BOIS:	
11	WILLIAM DU BOIS:	
	DIRECT EXAMINATION	
12	BY MR. RODEGERDTS	486
	CROSS-EXAMINATION	
13	BY MR. OSIAS	494
	BY MR. SLATER	500
14	BY MR. FLETCHER	510
	BY MR. ROSSMANN	514
15	REDIRECT EXAMINATION	
	BY MR. RODEGERDTS	520
16	RE-CROSS-EXAMINATION	
	BY MR. OSIAS	522
17	LARRY GILBERT:	
18	OPENING STATEMENT:	
	BY MR. GILBERT	523
19		
	JAMES WALKER:	
20	DIRECT EXAMINATION	
	BY MR. GILBERT	526
21	MICHAEL COX:	
	DIRECT EXAMINATION	
22	BY MR. GILBERT	535
	LARRY GILBERT:	
23	TESTIMONY OF	549
24		
25		

1	INDEX (CONT.)	
2		PAGE
3	LARRY GILBERT:	
4	CROSS-EXAMINATION OF PANEL OF THREE	
	BY MR. OSIAS	564
5	BY MR SLATER	611
	BY MR. ROSSMANN	619
6	REDIRECT EXAMINATION	
	BY MR. GILBERT	625
7		
	---oOo---	
8		
9		
10		
11		
12		
13		
14		
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SACRAMENTO, CALIFORNIA

MONDAY, APRIL 29, 2002, 10:00 A.M.

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CHAIRMAN BAGGETT: Back on the record.

Begin with the California Farm Bureau, the last of our case in chiefs, Phase I.

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DIRECT EVIDENCE OF CALIFORNIA FARM BUREAU FEDERATION

MR. RODEGERDTS: Mr. Chairman, members of staff, my name is Henry Rodegerdts. I'm an attorney with the California Farm Bureau Federation. I have submitted written testimony, not yet participated in the cross-examination, probably will during Phase II.

Farm Bureau's concerns are the third-party impacts that might arise out of the contemplated transfer. We are suggesting that there may, in fact, be impacts even if the following proposal doesn't go forward, and admittedly that is not actually on the table at this point in time, although it is an alternative and certainly has been alluded to by the earlier testimony that we have heard in Phase I.

We think that it ought to be brought out on the table and discussed. This is clearly the most far reaching water transfer that has yet occurred in California history. But there is every reason to believe that it is the first of a number to follow. There are many of the opinion that this

1 is the wave of the future. Oftentimes, these third-party
2 impacts, which we can argue are always present in any kind
3 of a transfer, are not properly addressed in the
4 environmental review because of some of the restraints in
5 the CEQA legislation and the interpretation that will flow
6 from it.

7 I am not going to summarize my testimony,
8 Mr. Chairman. It is part of the record. I am prepared to
9 submit it. I am prepared to offer myself for
10 cross-examining if that be the desire of anyone at this
11 time.

12 CHAIRMAN BAGGETT: Thank you.

13 Are we going to do cross-examination of each party
14 separately or have all three? Any preference?

15 MR. GILBERT: I prefer to do it separately.

16 MR. RODEGERDTS: It is true you have three cases in
17 chief here, but everyone appreciates, I think, the close
18 alignment between Mr. Du Bois and Mr. Larry Gilbert's case
19 in chief and that of the California Farm Bureau Federation.

20 In fact, Mr. Du Bois intends to summarize his
21 testimony, and I will elicit that by asking questions if
22 that would be the pleasure of the Board.

23 CHAIRMAN BAGGETT: That is fine.

24 MR. RODEGERDTS: As the suggestion has been made, we
25 prefer to do each of these in individual

1 cross-examinations. Although I understand that Mr. Gilbert
2 would prefer, but again it is up to the Board's discretion,
3 would prefer to offer his, the summary of testimony of his
4 two witnesses and his testimony, which I understand he is
5 going to just give you a summary of without an exchange,
6 but he would then prefer to have all three undergo
7 cross-examination simultaneously with him presenting all
8 three witnesses first.

9 CHAIRMAN BAGGETT: That is very good.
10 Imperial.

11 MR. OSIAS: Imperial has no cross-examination for Mr.
12 Rodegerdts.

13 CHAIRMAN BAGGETT: San Diego.

14 ---oOo---

15 CROSS-EXAMINATION OF CALIFORNIA FARM BUREAU FEDERATION

16 BY SAN DIEGO COUNTY WATER AUTHORITY

17 BY MR. SLATER

18 MR. SLATER: Good morning.

19 It is Mr. Rodegerdts?

20 MR. RODEGERDTS: Rodegerdts.

21 MR. SLATER: Mr. Rodegerdts, I want to ask you, if I
22 can, you referred to two studies that were authored by a Don
23 Villarejo; is that correct?

24 MR. RODEGERDTS: Yes.

25 MR. SLATER: The first study is on the Impact of

1 Reduced Water Supplies on the Central Valley Agriculture; is
2 that correct?

3 MR. RODEGERDTS: Yes.

4 MR. SLATER: Was that study on the impacts of a planned
5 fallowing program?

6 MR. RODEGERDTS: No.

7 MR. SLATER: Isn't it true that that study focused on
8 the economic impacts associated with reductions in CVP
9 delivery as a result of the drought?

10 MR. RODEGERDTS: Yes.

11 MR. SLATER: It also considered potential reallocation
12 of water supplies under the CVPIA; is that correct?

13 MR. RODEGERDTS: Yes.

14 MR. SLATER: And you don't disagree with the conclusion
15 in the Executive Summary which indicates that overall the
16 reduction amounted to more than 50 percent of the available
17 supply between the years 1984 and '86 when compared to the
18 final years of the drought?

19 MR. RODEGERDTS: No.

20 MR. SLATER: The second study that you referenced is
21 entitled Farmers, Workers and Townspeople in an Era of
22 Water Uncertainty; is that correct?

23 MR. RODEGERDTS: Yes. That would be our Exhibit 2.

24 MR. SLATER: Thank you, your Exhibit 2.

25 In turn that study relies to some degree on the prior

1 exhibit; is that correct?

2 MR. RODEGERDTS: I'm not sure that I would agree with
3 that characterization. I think that the conclusions reached
4 in each are essentially the same, that you curtail
5 agricultural water supply in any degree and actually result
6 in the fallowing of land because there is no water available
7 to keep it in production, that this has a rippling affect
8 which can become a cascade across the local economy of far
9 reaching consequences.

10 MR. SLATER: I suppose I was referring to Footnotes 7,
11 8, et cetera, in the report. But let me call your attention
12 to a specific conclusion just to make sure we are on the
13 same page.

14 Do you have the Exhibit No. 2 in front of you?

15 MR. RODEGERDTS: Yes.

16 MR. SLATER: Midway down, Page 3 of the report, in the
17 second full paragraph, Line 2.

18 MR. RODEGERDTS: Second full paragraph?

19 MR. SLATER: Yes. The report again concludes that
20 surface water deliveries to the CVP service area were 56
21 percent lower than the predrought period, correct?

22 MR. RODEGERDTS: Yes, that is what it states.

23 MR. SLATER: Do you happen to know who the surface
24 water contractor is in the area of Mendota?

25 MR. RODEGERDTS: No, I do not know offhand. There may

1 be one.

2 MR. SLATER: If I said Westlands, would that sound
3 right?

4 MR. RODEGERDTS: Satisfy me.

5 MR. SLATER: Are you familiar with the types of water
6 supply contracts that the Bureau of Reclamation has with its
7 contractors under the CVP?

8 MR. RODEGERDTS: To some extent.

9 MR. SLATER: Are you aware that there is a difference
10 between an exchange contract and a basic contract with the
11 Bureau?

12 MR. RODEGERDTS: Yes.

13 MR. SLATER: Are you aware that there are shortage
14 provisions in those contracts?

15 MR. RODEGERDTS: Yes. But that is not the issue. The
16 issue is here however the lack of water comes about there is
17 water that previously was used to irrigate crops which is
18 not available. Now, you can have provisions and anticipate
19 this may occur from time to time, but nonetheless the whole
20 group of people in communities and businesses out there who
21 may not fully appreciate that and make plans, make business
22 plans, personal plans on the assumption that agricultural
23 production will continue. And when you don't have a water
24 supply, it doesn't. That has impact. That is the only
25 point that we are trying to make here. That let us put that

1 up front, consider it and perhaps address it if it is
2 appropriate. Make provisions for the fact we will not have
3 the same degree of agricultural production that we once had
4 because the water is not available for whatever reason.

5 MR. SCOTT: Is there a difference -- Strike that.

6 The report indicates that there is a difference between
7 communities in the eastern Central Valley portion of Central
8 Valley and Mendota areas; isn't that correct?

9 MR. RODEGERDTS: Yes. I think that is correct.

10 MR. SLATER: Do you know whether -- Strike that.

11 Isn't it true that there are alternative water supplies
12 that are available in the eastern portion of the Central
13 Valley, groundwater and other surface water supplies?

14 MR. RODEGERDTS: Sure oftentimes in an overdrafted
15 basin, yes.

16 MR. SLATER: Isn't it true that Kings River system, for
17 example, is available to many irrigators in the Central
18 Valley?

19 MR. RODEGERDTS: That may be true, but, again, that is
20 not the point. That is not why we are offering the two
21 studies into evidence in this proceeding. It is the result
22 of agricultural water supply that was once generally
23 considered to be relatively secure and suddenly disappears.
24 That is the issue.

25 MR. SLATER: It is the lack of reliability associated

1 with water supply that is the issue, correct?

2 MR. RODEGERDTS: No. The water is there one year and
3 it is not there the next, and it is likely not to be there
4 the following year and the following year. It may, in fact,
5 have been considered reliable. Look back in California.
6 Ten years ago a whole lot of water supplies are now to be
7 considered to be very unreliable were considered pretty
8 reliable, pretty sacrosanct, pretty untouchable.

9 You know, the days when agriculture reigned supreme and
10 no one questioned that. Now we're questioning that.

11 MR. SLATER: So at one time the water supply was deemed
12 reliable?

13 MR. RODEGERDTS: Yes.

14 MR. SCOTT: It is your testimony now that it is not
15 reliable, correct?

16 MR. RODEGERDTS: Some supplies are not reliable.

17 MR. SLATER: The supplies that were studied in the
18 Mendota papers, is that reliable?

19 MR. RODEGERDTS: Again, that is not the issue. That
20 shortage largely came about because of drought conditions.
21 We are just talking -- these reports are being submitted
22 what happened -- I'm repeating myself now -- what happens
23 when the water supply disappears?

24 Here you are talking about reallocating 300,000
25 acre-feet of water for possibly 75 years. Most likely,

1 surely 45 years. That is a pretty significant change in
2 water availability and pretty permanent.

3 MR. SLATER: Is the water supply reliable?

4 MR. RODEGERDTS: Which water supply?

5 MR. SLATER: The water supply that was provided in the
6 Mendota study example.

7 MR. RODEGERDTS: I don't understand the question.

8 MR. SLATER: You have two papers, correct?

9 MR. RODEGERDTS: Yes.

10 MR. SLATER: Both authored by Don Villarejo, correct?

11 MR. RODEGERDTS: Yes.

12 MR. SLATER: He studied the impacts of reduced water
13 supply in the Mendota area, correct?

14 MR. RODEGERDTS: Yes.

15 MR. SLATER: It is your testimony that that water
16 supply was unreliable, correct?

17 MR. RODEGERDTS: Yes.

18 MR. SLATER: And it is your testimony that that water
19 supply is not now reliable, correct?

20 MR. RODEGERDTS: No, I am not saying that. We are not
21 talking about the condition now; we are talking about the
22 condition then. There was a drought, a five- or six-year
23 drought, and that water wasn't on the landscape, and it
24 resulted in agricultural production declining
25 significantly.

1 CROSS-EXAMINATION OF CALIFORNIA FARM BUREAU FEDERATION
2 BY COUNTY OF IMPERIAL
3 BY MR. ROSSMANN

4 MR. ROSSMANN: Sir, I just have one question for Mr.
5 Rodegerdts.

6 Your written testimony, sir, are you prepared to verify
7 that is true under penalty of perjury?

8 MR. RODEGERDTS: Indeed, I am.

9 MR. ROSSMANN: Thank you, sir.

10 CHAIRMAN BAGGETT: Mr. Du Bois.

11 MR. DU BOIS: No.

12 CHAIRMAN BAGGETT: Mr. Gilbert.

13 MR. GILBERT: No questions.

14 CHAIRMAN BAGGETT: You can redirect yourself here.

15 MR. RODEGERDTS: I weighed that opportunity and at
16 this time I would like to move into evidence California Farm
17 Bureau Federation Exhibit 1, 2 and 3.

18 CHAIRMAN BAGGETT: There is no objection. They are so
19 entered.

20 Thank you very much.

21 Mr. Du Bois.

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23 DIRECT EXAMINATION OF WILLIAM DU BOIS
24 BY MR. RODEGERDTS

25 MR. DU BOIS: I will take the stand as my own witness,

1 and Henry Rodegerdts will interrogate me.

2 CHAIRMAN BAGGETT: Interrogate.

3 MR. RODEGERDTS: Mr. Du Bois, would you state your full
4 name for the record?

5 MR. DU BOIS: My name is William I. Du Bois, and I am
6 also representing six other members of my family who are
7 also landowners.

8 MR. RODEGERDTS: And your current address?

9 MR. DU BOIS: 3939 Walnut Avenue, Carmichael, but at
10 other times my address is 801 West Ross Road, El Centro. I
11 live in both places.

12 MR. RODEGERDTS: What is your occupation?

13 MR. DU BOIS: Well, for purposes of this hearing I am
14 an Imperial Valley farmland owner. However, most other
15 occasions I represent the California Farm Bureau as a
16 natural resources consultant.

17 MR. RODEGERDTS: This -- you are a farmland owner.
18 Where is that property located?

19 MR. DU BOIS: My property is in Section 10, Township 16
20 South, Range 13 East, San Bernardino Basin Meridian; and
21 that is located for other ways of finding it about a mile
22 west of El Centro on both sides of Interstate 8.

23 MR. RODEGERDTS: I won't ask you your age, but I do
24 want to ask your farming experience and background, and I
25 think it goes back a long ways.

1 MR. DU BOIS: Yes. I started farming in 1937 on rented
2 land. And 1940 I bought my first property, and I have
3 raised some 15 different crops during the period of time. I
4 also did custom farming other people's ranches, all the way
5 from soil preparation to harvesting the crops. I was on
6 the board of directors of several corporations for
7 harvesting, marketing and processing, both cooperatives and
8 corporations.

9 Also, I think, what is kind of important for these
10 purposes here, I have done a lot of irrigating myself, long
11 ago.

12 MR. RODEGERDTS: Out in the field with the boots on?

13 MR. DU BOIS: Correct.

14 MR. RODEGERDTS: You have also seen the evolution of a
15 lot of farm practices and crops in the Imperial Valley, is
16 that correct?

17 MR. DU BOIS: Yes. They certainly have changed. I
18 have been not farming myself for about 30 years. And I
19 think I'd be a fool to go back and try it again now because
20 the laws have changed and the practice has been changed.

21 MR. RODEGERDTS: Do you go down there often to the
22 Imperial Valley?

23 MR. DU BOIS: Yes, about twice a month.

24 MR. RODEGERDTS: About how long do you stay when you
25 are down there?

1 MR. DU BOIS: All the way from a two-hour meeting to
2 when I have the time I can spend a week there.

3 MR. RODEGERDTS: You go out and talk to the farmers in
4 the fields and you are aware of what is going on when you
5 are down there; is that correct, in the agricultural arena?

6 MR. DU BOIS: I try to keep aware. The reason I do
7 that is because I depend on lessees to farm my property, and
8 farming has not been so profitable in the last few years
9 that lessees have a habit of, I wouldn't say a habit, but a
10 fear of going through bankruptcy. They don't make good
11 tenants after that.

12 MR. RODEGERDTS: Do you wish to make any changes to
13 your written testimony?

14 MR. DU BOIS: Yes, I do. The draft that was -- the
15 testimony that was sent out to the parties has some blanks
16 in it, and it was also labeled opening statement. I think
17 it should be labeled testimony.

18 That is on my Exhibit 6. It is on Page 5 of the
19 exhibit, paragraph subtitled Drainage Water Going into
20 Salton Sea, the exhibit numbers may have been left blank.
21 The first one says see IID Exhibit B 1600, and it should be
22 corrected to read State Water Resources Control Board
23 Exhibit 2.

24 The next paragraph contains blanks which should read Du
25 Bois No. 1, Du Bois No. 2 and Du Bois No. 3. Incidentally,

1 my number one is the same as part of IID Exhibit No. 42. On
2 Page 7, under the subparagraph labeled Hazards, the pricing
3 exhibit referred to is IID 7.

4 On Page 8 under Water Allocation the last line of the
5 second paragraph should read Exhibit Du Bois No. 4,
6 Resolution 12-96.

7 And finally on Page 12, under Financing, the last line
8 of the first paragraph should read Exhibit Du Bois No. 5.

9 MR. RODEGERDTS: Thank you.

10 Are you familiar with California water transfers, in a
11 general sense?

12 MR. DU BOIS: Yes. In my work with the California Farm
13 Bureau in the last 30 years, particularly the last 15 of
14 those years, there have been a number of transfers that have
15 been somewhat noteworthy, and I tried to keep abreast of
16 most of the procedures in those transfers. In addition to
17 my work professionally for the Farm Bureau, being a
18 landowner myself, I have a natural instinct to want to know
19 more about this. So I have kept abreast of them for that
20 reason, too.

21 MR. RODEGERDTS: Would you consider yourself to be a
22 opposed to this transfer?

23 MR. DU BOIS: No. I am not opposed to it. I think it
24 could be beneficial for the whole Imperial County and for
25 the Irrigation District. However, I am so concerned about a

1 good many of the details that if they are not changed, I
2 think I will be opposed to it.

3 MR. RODEGERDTS: What changes do you think would be
4 necessary for this to get your support?

5 MR. DU BOIS: As indicated in my testimony, I have
6 identified about ten issues I think that are principal
7 facts. One is risk. It is a terribly risky situation that
8 we find ourselves in now, both from the Salton Sea
9 standpoint and also from the standpoint that we don't have
10 any knowledge of what the IID farmer/landowner contracts are
11 going to be like. And I think that is probably one of the
12 principal risks that cause me to be very cautious about
13 support.

14 The second is the pricing structure. I'm probably not
15 the smartest guy alive and I haven't had the best
16 mathematical education and I am free to admit that I don't
17 understand the pricing structure that is cranked into the
18 contract, and I don't think I would want to sign a contract
19 that I didn't understand. That is a problem.

20 The length of time for which we are obligated, I think
21 75 years, is really not reasonable because so many things
22 can change within a period of a span of a very few
23 years. I'd be much more comfortable with a contract for 20
24 or 30 years, but certainly not for anything like 45 years
25 which is with its provisions that either party can trigger

1 the extension I think is very hazardous.

2 Another problem I have is the way history is used as
3 the basis from which the District would apparently intend to
4 calculate water savings or water conservation. Or I prefer
5 to use the Board water salvage. I think conservation is an
6 overused and inaccurate term for using less water.
7 The sequence of investments is another point. The contract
8 seems to indicate that the first water would come from
9 130,000 acre-feet of on-farm conservation. And on-farm in
10 many farms, the IID water delivery is -- I wouldn't say
11 spasmodic, it's pretty reliable, but it fluctuates up and
12 down. And the farmer cannot make the same -- cannot take
13 the same benefit from doing on-farm conservation that he
14 could if the system were much more reliable in its delivery
15 characteristics. And so because of that, I think the
16 system improvements should absolutely be made first before
17 the on-farm contracts are exploited.

18 MR. RODEGERDTS: By system improvements you mean those
19 that the District are going to --

20 MR. DU BOIS: The District itself, they have done, I
21 think, a pretty good job of identifying things that they can
22 do that, they can't do under the present circumstances
23 because it wouldn't be an economic move for them. But where
24 they can sell part of the water that is salvaged through
25 those means, it does become economic.

1 Following is another issue. I think a fallowing --
2 well, some of my friends down in Imperial when they talk
3 about fallowing, they say, "When does it end?" If you
4 fallow for one purpose, what is to keep you from fallowing
5 for another purpose or from extending the quantity of
6 fallowing until you wind up with practically no farming
7 scenario in the county? You begin to lose your farm
8 equipment dealers and your other service contractors.

9 Another thing is the volume of water subject to
10 transfer. I just think that starting out with a contract
11 that obligates you to salvage 300,000 acre-feet of water is
12 not a reasonable thing to do all at one move. I think the
13 District did very well in the first 110,000 acre-feet that
14 was financed up front by Metropolitan Water District. But
15 to now add 300,000 acre-feet to that I think is not good
16 judgment.

17 As I mentioned before, the -- I did not mention this
18 before. But I have picked up information incidentally
19 during the last couple weeks that makes me believe that the
20 agreement between San Diego and IID probably will be amended
21 and, of course, this is another source of concern. I
22 studied the present agreement very carefully a few years
23 ago, and I would like time to study it at least as carefully
24 after it is rewritten.

25 Then my last point is the uncertainty of the division

1 of the income. The agreement specifies, I think, some \$249
2 an acre-foot that San Diego would pay to Imperial in the
3 first 20 years plus inflation factor, but we don't have any
4 indication from our own District as to how that would be
5 divided. It seems the community wants a bite of it. I know
6 the District will have to have a bite of it because they
7 have administrative costs, and I am uncertain how much the
8 environmentalists are going to whack out for the lawsuits
9 that we suffer. So this is another concern to me.

10 MR. RODEGERDTS: Do you have anything else that you
11 would like to add by way of summary?

12 MR. DU BOIS: I could add a great deal. But I think
13 most of it is related in my testimony and in the interest of
14 time I think I would stand for cross-examination.

15 MR. RODEGERDTS: I offer Mr. Du Bois for
16 cross-examination.

17 CHAIRMAN BAGGETT: Thank you.
18 Imperial.

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20 CROSS-EXAMINATION OF MR. DU BOIS

21 BY IMPERIAL IRRIGATION DISTRICT

22 BY MR. OSIAS

23 MR. OSIAS: Good morning, Mr. Du Bois.

24 MR. DU BOIS: Good morning.

25 MR. OSIAS: Nice to see you again.

1 You have been a landlord of Imperial Valley farmland
2 for some significant period length of time?

3 MR. DU BOIS: Approximately 30 years.

4 MR. OSIAS: Has it been pursuant to a 30-year lease, or
5 do you have --

6 MR. DU BOIS: No. I did sign a ten-year lease one
7 time because the party wanted to plant asparagus, and I
8 extended that for a couple years because the asparagus
9 lasted a little longer. But the 12-year lease is the
10 longest that I have dealt with a lessee.

11 MR. OSIAS: That was because of the crop that the
12 lessee wanted to grow?

13 MR. DU BOIS: That's correct.

14 MR. OSIAS: So a typical lease is five years? Four
15 years?

16 MR. DU BOIS: No, I wouldn't say that. I have leased
17 for only single crops for a portion of a year. I guess I
18 would say the commonest term is probably three years for
19 me.

20 MR. OSIAS: Thank you.

21 Could you tell us what sort of typical dollar per acre
22 rent is?

23 MR. DU BOIS: I can tell you what in my neighborhood it
24 is. The ground that I own is neither extremely soft nor
25 hard. It is not ground that is particularly difficult to

1 farm. On the other hand, it's got a quite a bit of clay in
2 it. We lease for in the neighborhood of 150 to \$200 an acre
3 a year.

4 MR. OSIAS: Thank you.

5 Now you don't tell your tenant what to grow, do you?

6 MR. DU BOIS: No. But -- not directly. I don't write
7 it in the lease, but I would like to know what is going to
8 be grown ahead of time.

9 MR. OSIAS: So that is something you discuss before you
10 enter a lease?

11 MR. DU BOIS: Yes, that is correct.

12 MR. OSIAS: Would it be fair to say that the crop
13 selected by the tenant is selected for a variety of
14 reasons?

15 MR. DU BOIS: No. I think there is only one reason
16 that he select a crop and that is he figures he can make
17 money on it.

18 MR. OSIAS: The suitability of the soil wouldn't be a
19 factor?

20 MR. DU BOIS: Of course. The character of the soil
21 limits him, absolutely, that is the degree of success. But
22 my ground is pretty much multipurpose, and I think it will
23 grow most any crop that is grown in Imperial.

24 MR. OSIAS: Has it rotated through different crops in
25 the past?

1 MR. DU BOIS: I beg your pardon?

2 MR. OSIAS: Has your land rotated through different
3 crops in the past?

4 MR. DU BOIS: Yes.

5 MR. OSIAS: Is rotation necessary?

6 MR. DU BOIS: I wouldn't say it's necessary. I know
7 there are experimental plots that have been in cotton
8 constantly for decades, and sometimes they keep improving
9 the ground. But it is a general practice to, in my
10 community, to have three or four years in alfalfa and then
11 to rotate into other crops. It might be grain. It might be
12 vegetables or oil seed crops, or things like that.

13 MR. OSIAS: There are no significant properties, for
14 example, that have stayed in alfalfa for 20 years in a row?

15 MR. DU BOIS: No. But I had alfalfa stay in for six
16 years in a row.

17 MR. OSIAS: Then the land was rotated to another crop?

18 MR. DU BOIS: Usually, yes.

19 MR. OSIAS: You mentioned in your written testimony
20 that you were concerned about risk associated with the
21 decline in the Salton Sea, correct?

22 MR. DU BOIS: Yes, I am very concerned about that.

23 MR. OSIAS: I think you even mentioned that property
24 owners who sued IID for the Sea going up may now sue them
25 for the Sea going down; is that right?

1 MR. DU BOIS: That is one of the things I see in the
2 future. I'm paranoid about that.

3 MR. OSIAS: Would your fear be somewhat alleviated if
4 there was a law that held that the IID should enter into an
5 agreement to reduce through conservation measures the volume
6 of the flow directly or indirectly into the Salton Sea shall
7 not be held liable for any effects to the Salton Sea or its
8 bordering area resulting from the conservation measures?
9 Would that reassure you some?

10 MR. DU BOIS: Those are comforting words, but that
11 legislation hasn't stood the test of time. Therefore, it is
12 of considerable concern to me whether it will turn out to be
13 constitutional or not.

14 Working as a lobbyist, I helped in the formation of
15 some of that legislation, and I've been waiting to find out
16 how good it is when it gets into court.

17 MR. OSIAS: When you say it hasn't withstood the test
18 of time, you are not aware of any case that has held it is
19 not, correct?

20 MR. DU BOIS: I beg your pardon?

21 MR. OSIAS: You know of a judicial decision that says
22 that that law is not effective?

23 MR. DU BOIS: That's correct.

24 MR. OSIAS: You are just worried about it?

25 MR. DU BOIS: That's correct.

1 MR. OSIAS: Has any environmental group approached you
2 to lease your land?

3 MR. DU BOIS: No. I guess the nearest person that
4 might be interested in leasing property like that would be a
5 hunting group. But my property is split by Interstate 8,
6 and it is not a good idea to use a rifle or shotgun on
7 either sides of Interstate 8, so I think they would probably
8 not want to lease the place, and I don't think I want the
9 liability of leasing it to them, a group like that. I
10 really don't believe that it is the highest and best use is
11 for environmental purposes.

12 MR. OSIAS: I was actually thinking more in lines of
13 its water supply. No environmental group has asked to lease
14 your land in order to fallow it, correct?

15 MR. DU BOIS: Yes. But I think the Imperial Irrigation
16 District general policy, although I don't believe it is
17 written, I think they have a general policy opposing
18 fallowing. I believe that is why it is in the San
19 Diego/Imperial agreement, prohibition against fallowing.

20 MR. OSIAS: That is all I have.

21 Thank you.

22 CHAIRMAN BAGGETT: Thank you.

23 San Diego.

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CROSS-EXAMINATION OF MR. DU BOIS
BY SAN DIEGO COUNTY WATER AUTHORITY
BY MR. SLATER

MR. SLATER: Good morning, Mr. Du Bois.

MR. DU BOIS: Mr. Slater.

MR. SLATER: You live in Imperial County?

MR. DU BOIS: Yes.

MR. SLATER: Do you live within the boundaries of the Imperial Irrigation District?

MR. DU BOIS: I do.

MR. SLATER: Are you registered to vote?

MR. DU BOIS: I am.

MR. SLATER: Can you explain to me how your tenants go about ordering water from the Imperial Irrigation District?

MR. DU BOIS: Well, I may not be as up to date as I should be because I haven't checked with them lately. But I believe the procedures are somewhat the same. There is a deadline each day by which water needs to be ordered in order to receive water the following day. But once in a long while --

My property is located near the headwaters of a canal, the Eucalyptus Canal, and because of being near the headwaters, the water service is more reliable if we are at the very north ends as some of the later witnesses will indicate.

1 But the District has the right to hold deliveries for,
2 I think, up to three days in case they are short of water.

3 MR. SLATER: Is that a scheduling issue as opposed --

4 MR. DU BOIS: I think it is probably a -- I am sure the
5 District can answer this more accurately than I can. My
6 impression is that is because the District did not calculate
7 on maybe an increase in temperatures that stepped up the
8 irrigation on people's farms, and so they got more orders
9 than they would have otherwise. And they just don't have
10 the water at the time.

11 MR. SLATER: To the best of your knowledge, the
12 District has never declared a moratorium on servicing these
13 connections, has it?

14 MR. DU BOIS: That is -- maybe I better ask you to
15 restate that question.

16 MR. SLATER: Start here. To the best of your
17 knowledge, has the District ever engaged in an annual
18 rationing program of any kind?

19 MR. DU BOIS: Not annual rationing. There was one time
20 before Hoover Dam was operative that the District ran out of
21 water, and they then instituted a rationing plan which gave
22 livestock the first preference, perennial crops the second
23 preference, and annual crops the last preference of water.
24 At that time there were -- it was prohibitive to irrigate
25 landscaping outside the house, and I was just out of high

1 school at that time. It was in the early '30s, and so a
2 couple of friends of mine formed a company and we delivered
3 water to people in town for the landscaping, primarily
4 wealthy people like attorneys, doctors, et cetera.

5 MR. SLATER: That is a great story.

6 Since the '30s are you aware of any annual rationing
7 program that has been adopted by Imperial Irrigation
8 District?

9 MR. DU BOIS: I would say since Hoover Dam became
10 operable, it has not been necessary to do that, except just
11 the temporary situations where they didn't order enough
12 water or the canal capacity was limited to certain amount of
13 water, and they had more orders than the capacity.

14 MR. SLATER: To the best of your knowledge, Imperial
15 Irrigation District has never held a moratorium and said
16 there is no more water available within our boundaries?

17 MR. DU BOIS: Not that I have.

18 MR. SLATER: To the best of your acknowledge, has the
19 Secretary of Interior or any federal government or agency
20 ever told Imperial there wasn't enough water to meet their
21 demands?

22 MR. DU BOIS: There you have asked me a question that
23 is beyond my capacity to know. I am not aware of any time
24 that the Bureau of Reclamation has refused to deliver water
25 to the Irrigation District, but there may be times when that

1 happened, but not to my knowledge.

2 MR. SLATER: Fair enough.

3 Mr. Du Bois, have you bought and sold land for farming
4 purposes?

5 MR. DU BOIS: Yes, I have bought lands. I never
6 regretted it, but I have sold land and I did regret that.

7 MR. SLATER: And you're presently leasing land,
8 correct?

9 MR. DU BOIS: I am the lessor.

10 MR. SLATER: Now in your experience as a buyer and
11 seller and a lessor for farming, land for farming, in your
12 view is it material whether there is a water supply
13 available for property that you are buying, selling or
14 leasing?

15 MR. DU BOIS: It is the most important factor probably
16 alongside the quality of the lands. There are other
17 factors, too, but that is certainly such an important factor
18 that is one of the reasons that I worry about this business
19 of using history as a basis for determining the amount of
20 water that a person can salvage to sell to San Diego.

21 MR. SLATER: Most important factor, that's correct?

22 MR. DU BOIS: I would say outside of the quality of the
23 land, yes, it is the most important.

24 MR. SLATER: So if you were in the business of buying
25 property, if you had property -- if you were considering

1 property that was 50 percent reliable, that wouldn't be as
2 valuable as property, soil being equal, that wouldn't be as
3 valuable as property with a reliable supply of water,
4 correct?

5 MR. DU BOIS: That's correct.

6 MR. SLATER: Mr. Du Bois, are you aware of any claims
7 that have been made that IID is wasting water within its
8 boundaries?

9 MR. DU BOIS: I think the name -- the word "waste" I
10 don't believe was used in D-1600. But that is as close as
11 Irrigation District came to having, I guess, a legal
12 decision that they were wasting water. I think what
13 Decision 1600 said, as I recall, is that the District should
14 devise a means of conserving a good bit of that water that,
15 at that time, was going into Salton Sea because the State
16 Water Resources Control Board at that time did not give much
17 credibility to the Department of Fish and Game's witness
18 that said that water going into Salton Sea was a beneficial
19 use of water.

20 MR. SLATER: Are you aware of any claims made by the
21 Bureau of Reclamation that IID is wasting water?

22 MR. DU BOIS: No. I know they've hired a different
23 consultant to issue studies of water use in Imperial, and it
24 had some problems with the accuracy of some of those
25 reports. We are working on an issue here that is somewhat

1 in the eyes of a beholder because the experts disagree on,
2 for instance, how much leaching fraction is essential to
3 keep your ground in good shape. And so it is an inexact
4 science I would say at this time.

5 MR. SLATER: So there is some disagreement, in your
6 mind, among the experts which creates some uncertainty?

7 MR. DU BOIS: I would agree to that.

8 MR. SLATER: What about claims from the Metropolitan
9 Water District, ever heard any claims that IID is wasting
10 water from Metropolitan?

11 MR. DU BOIS: I haven't heard any official claims. I
12 presume it's some of their PR people may find statements
13 alluding to that as useful. But my relations with
14 Metropolitan Water District have almost always been good,
15 and I think they're a very realistic bunch of people.

16 MR. SCOTT: What about claims by Coachella that IID is
17 wasting water?

18 MR. DU BOIS: Well, yes, I've heard claims, but I think
19 mainly they are made in light conversation. It would be
20 hard for someone in Coachella to claim that Imperial is
21 wasting water when they have a higher efficiency rating than
22 Coachella has. But their manager, I think, takes some
23 license in claiming that Imperial has wasted water because
24 they are next in line and they would like to have the
25 water.

1 MR. SLATER: Mr. Du Bois, isn't it true that if the QSA
2 and the transfer agreement were successful in resolving
3 claims against IID for wasting water that that would be a
4 beneficial thing for IID?

5 MR. DU BOIS: I am not sure I understand your
6 question.

7 MR. SLATER: If it was true that -- if there was a --
8 Strike that.

9 If Coachella, Metropolitan and the Bureau of
10 Reclamation were correct in their claims that IID was
11 wasting water, would that create a condition of uncertainty
12 within IID?

13 MR. DU BOIS: I suppose it would, but I don't think
14 that they would be successful in pressing those claims. I
15 think Imperial would not be found guilty of that.

16 MR. SLATER: Isn't it true that farmers and Imperial
17 would be better off if those claims were not asserted?

18 MR. DU BOIS: Well, it is obviously the opinion of our
19 Board of Directors of Imperial Irrigation District that
20 that is the case. Other ways I don't think they would have
21 entered into the Quantification Settlement Agreement because
22 it is not really otherwise advantageous to Imperial.

23 MR. SLATER: On Page 13 of your testimony you indicate
24 that IID may be acting out of duress because of Decision
25 1600.

1 Is that correct?

2 MR. DU BOIS: Yes, I did make that statement.

3 MR. SLATER: And what would be the duress that you were
4 referring to?

5 MR. DU BOIS: Well, the duress would come from the
6 instructions that were levied on IID by D-1600 and other
7 communications between the State Board and the Imperial
8 Irrigation District subsequent. And I think this has put
9 Imperial's negotiators in an unfortunate frame of mind, that
10 unless they come up with a tremendously ostentatious
11 agreement here, that they would suffer the consequences from
12 the State Board.

13 MR. SLATER: Isn't it true that farmers in Imperial and
14 Imperial would be better off if they didn't have a pending
15 waste claim levied against them?

16 MR. DU BOIS: Obviously.

17 MR. SLATER: On Page 13 of your testimony you introduce
18 a concept of fallowing. Can you explain what you mean by
19 fallowing?

20 MR. DU BOIS: What I mean by fallowing depends on the
21 circumstances in which we are discussing it. I had the word
22 "fallowing" inserted into some of the language in the state
23 Water Code when I was working as a lobbyist with the
24 Legislature, because I did not want to have a farmer accused
25 of not using water properly when he was not raising a crop

1 on his land during a time that was necessary to let the land
2 lie idle before the planting season for the next crop. It
3 was this simply what I had in mind was a space in between
4 the time you harvest one crop and you plant another crop.

5 And I think that it's been customary in Imperial,
6 anyway, to say the land lies fallow, which means it is not
7 in a crop. And the difference between that conception of
8 fallowing and what is being discussed by proponents of
9 letting water that Imperial now uses run as a supply to
10 Salton Sea is entirely different.

11 By their fallowing I am sure that they mean leaving the
12 lands lie idle for a period of years. Now that is the best
13 answer I can give you, I think, as to what I believe
14 fallowing means.

15 MR. SLATER: And for you the distinction between
16 temporary fallowing and permanent fallowing is a number of
17 years?

18 MR. DU BOIS: A period of time and a purpose.

19 MR. SLATER: With regard to the period of time, at what
20 point does temporary fallowing become permanent fallowing?

21 MR. DU BOIS: I would say a year. But there might be
22 circumstances under which a person would change his mind
23 during the period that the land lay fallow as to his former
24 plans to plant a particular crop. And they might decide
25 that that crop was going to be a loser now instead of a

1 winner, so he would delay a couple months or so for the
2 right time to plant another crop. That is all.

3 MR. SLATER: Mr. Du Bois, is that the sense, then, I
4 should take your testimony on Pages 13 and when you
5 reference temporary fallowing?

6 MR. DU BOIS: Yes. Temporary fallowing in that case
7 that I suggested is to let the land lie fallow for an
8 indeterminate period of time in order to produce revenue for
9 the Imperial Irrigation District to use to pay for their
10 system improvements. Because in my opinion the Imperial
11 Irrigation District is operating their water division -- Is
12 operating on borrowed funds. And I believe that is not good
13 judgment for IID to get too deep into debt in their water
14 division because the farmers don't like to pay that
15 interest.

16 MR. SLATER: So in your experience as a farmer it is
17 your opinion that a temporary fallowing program would be
18 okay, correct?

19 MR. DU BOIS: I would support that because I think
20 there is some land that is -- the way it is farmed is an
21 inefficient use of water. And if the District could lease
22 that land or purchase it, that they might thereby acquire
23 capital to work with in their system improvements.

24 MR. SLATER: Again, picking a time period, a temporary
25 fallowing program be a period of less than ten years?

1 is farmed inefficiently; is that correct?

2 MR. DU BOIS: Inefficiently from a standpoint of the
3 use of water.

4 MR. FLETCHER: Could you describe for us what kind of
5 crops are grown on that land?

6 MR. DU BOIS: I can't tell you what crops are being
7 grown on it currently because I haven't examined it the last
8 couple years, but I know what the properties is like. It is
9 extremely sandy and water infiltrates very rapidly, and so
10 in order to be efficient with the use of water it requires
11 equipment and skills that are not employed on ordinary land.

12 MR. FLETCHER: The inefficiency comes from the nature
13 of the land?

14 MR. DU BOIS: That is correct.

15 MR. FLETCHER: If a financial incentive was established
16 to enable or facilitate the temporary fallowing you are
17 talking about, would it be your expectation that if that
18 program was voluntary and offered to all farmers within the
19 District, that those, either landowner or tenants, who have
20 land of the sort that you described, inefficient because of
21 the nature of the land, might sign up for that in
22 proportion, in a different proportion, from those who have a
23 type of land that can be farmed more efficiently from the
24 standpoint of water use?

25 MR. DU BOIS: I would anticipate that might be the

1 case. But I think my answer has to be somewhat clouded
2 because we are not sure what the District, Imperial
3 Irrigation District, is going to use as a basis from which
4 to determine the amount of water that a piece of ground
5 would be credited with for purposes of calculating the
6 amount salvaged. I am very uncertain about that.

7 MR. FLETCHER: Earlier in your testimony you stated
8 that it was general practice within the IID service area to
9 on any given piece of land to rotate to several different
10 types of crops?

11 MR. DU BOIS: Yes. I would say with the exception of
12 land that is planted to maybe citrus or -- I found out the
13 other day a big piece of ground is planted to bamboo. I'm
14 sure they are not going to rotate for quite a few years.
15 And then asparagus, once planted, you hope it is going to
16 last 10 to 15 years. You don't rotate that.

17 MR. FLETCHER: On other types of lands you stated that
18 it was the general practice to put land in alfalfa for
19 approximately three to four years?

20 MR. DU BOIS: Well, most lessees, I think, like to
21 lease grounds that is about ready to come out of alfalfa or
22 has come out of alfalfa because it is generally in better
23 shape for vegetables and other crops.

24 MR. FLETCHER: You also testified that some lands that
25 you lease out has been in alfalfa for as much as six years?

1 MR. DU BOIS: That's correct.

2 MR. FLETCHER: Why is that?

3 MR. DU BOIS: The market price indicated that the guy
4 would make more money in alfalfa than he would in an
5 alternate crop, so he kept it in alfalfa.

6 MR. FLETCHER: Is it the case that some crops are more
7 profitable in a given year than others?

8 MR. DU BOIS: It sure is the case.

9 MR. FLETCHER: If a financial incentive was offered to
10 landowners to fallow some land, would you expect that they
11 would reduce their production of the those crops that at
12 that time were more profitable or less profitable?

13 MR. DU BOIS: You know, it's a really hard thing to
14 answer a question like that, and I am not trying to be vague
15 or avoid it. But there is so many things that go into
16 consideration.

17 A guy might have a contract to furnish a product to
18 somebody, and he has to honor that contract. You might have
19 a big investment, he might own part of a cotton gin, so he
20 wants to raise cotton. He might own part of a dehydrator,
21 so he may want to raise crops for the dehydrator. There
22 are so many factors to enter into it. There is not a simple
23 decision.

24 MR. FLETCHER: Would you expect that if a financial
25 incentive program to fallow some land was offered, that

1 crops would be reduced -- production of crops would be
2 reduced in the proportions that they are currently grown
3 within the Imperial Valley?

4 MR. DU BOIS: You can say generally, yes, but that
5 might be not true. And I know of one landowner that would
6 be absolutely delighted to fallow the ground for a price,
7 but I think that this is going to have to be done in
8 accordance with policy set by the Imperial Irrigation
9 District. So a great deal depends on that.

10 MR. FLETCHER: No further questions.

11 Thank you.

12 CHAIRMAN BAGGETT: Thank you.

13 County of Imperial.

14 MR. ROSSMANN: Yes, sir.

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16 CROSS-EXAMINATION OF MR. DU BOIS

17 BY COUNTY OF IMPERIAL

18 BY MR. ROSSMANN

19 MR. ROSSMANN: First of all, Mr. Du Bois, let me ask
20 the same question I asked of Mr. Rodegerdts.

21 Is your testimony, which I believe is Exhibit 6 and now
22 labeled testimony rather than statement, is that true under
23 penalty of perjury?

24 MR. DU BOIS: It is.

25 MR. ROSSMANN: Thank you, sir.

1 Further in your testimony you talked about assessed
2 valuations. Would you anticipate that the Imperial County
3 assessor would reduce the assessed valuation of land that
4 was long-term fallowed?

5 MR. DU BOIS: I think the assessor might not in that
6 case if it is a long-term fallow, he might assess -- well,
7 there is the Williamson Act to consider, too. Some of the
8 land is in the Williamson Act, and I don't know if fallowing
9 would be considered an allowed purpose there. So it might
10 violate that. But say that it is not in the Williamson Act,
11 not in the land conservation program, I think the assessor
12 might increase the valuation because one of the things that
13 you usually have to tell the assessor is what's the land
14 producing, economically. I know when you lease land, they
15 want to know what is the price being paid. And they are --
16 I think have a strong tendency to value the land according
17 to what it is producing.

18 So it might go both ways there. Some land that hasn't
19 been farmed consistently would have a low water -- I have a
20 tendency to use the word allotment, although I know it is
21 not a true allotment of water. The District's calculations
22 of the potential water production vary from, I think, maybe
23 less than one acre-foot to in excess of 15 acre-feet. So
24 that would certainly make a difference, I think, in the end
25 to the assessor.

1 MR. ROSSMANN: Well, I understood your earlier
2 testimony to indicate that an important component of the
3 value of the land is the water available to it?

4 MR. DU BOIS: Yes.

5 MR. ROSSMANN: Let me restate the question this way:
6 If less water were made available permanently to a piece of
7 land not in the Williamson Act contract, would that not tend
8 to also reduce its assessed valuation?

9 MR. DU BOIS: Certainly, if a person wanted to farm the
10 ground, it would be virtually worthless.

11 MR. ROSSMANN: Thank you, sir.

12 Exhibit 5 is an agenda item for the Imperial Board on
13 March 12th. Could I ask you to get that in front of you.

14 MR. DU BOIS: Yes.

15 MR. ROSSMANN: Are you aware of what action the board
16 of directors took on that agenda item in Exhibit 5?

17 MR. DU BOIS: No, I'm not. The reason I didn't follow
18 that up, I had to leave the meeting before the meeting was
19 held, and I picked this information up out of the board
20 material. And the interesting part to me was not whether
21 the board took one action or another on it, but it was the
22 phrase that is used under the headline Financial Impact that
23 the IID had budgeted and secured bond financing for
24 \$23,000,000 to cover expenditures associated with the water
25 conservation transfer project.

1 The reason that was of interest to me was I asked the
2 District Board, I don't remember the time, maybe three years
3 ago, to please keep track of what they spent on the transfer
4 so that the expenditures could be reimbursed by the people
5 who signed contracts to deliver water to San Diego, so that
6 it wouldn't -- they've always characterized this transfer as
7 being voluntarily. And in my opinion it is only voluntary
8 to the extent that everything runs along smoothly.

9 I would foresee that this board may not agree that this
10 transfer, as it is constructed, would go through and,
11 therefore, the District would be stuck with, in this case,
12 \$23,000,000 and all the landowners or all the water users
13 have to pay it back. So it is not voluntary.

14 MR. ROSSMANN: I think I comprehended the purpose for
15 which you attached Exhibit 5, but the part about Exhibit 5
16 that interested the County of Imperial is the fact that it
17 indicates that there is still ongoing modeling work with
18 respect to the economic impacts of this transfer in
19 connection with the State Board hearing process.

20 So you don't know whether the Imperial District Board
21 approved the request to make the funds available to complete
22 that?

23 MR. DU BOIS: No, I did not follow that up.

24 MR. ROSSMANN: Thank you, sir.

25 You and Mr. Osias were in a dialogue about exemption of

1 liability for Salton Sea impacts. And it appeared that he
2 was reading from a provision perhaps of the State Water Code
3 that you were familiar with?

4 MR. DU BOIS: I believe so.

5 MR. ROSSMANN: Do you know what section of the Water
6 Code that would be?

7 MR. DU BOIS: I can't remember. It's probably 1011 or
8 1013 or 1012, along in that area.

9 MR. ROSSMANN: It was from the State Water Code?

10 MR. DU BOIS: I believe so.

11 MR. ROSSMANN: Thank you, sir.

12 MR. OSIAS: 1013.

13 MR. ROSSMANN: Thank you, sir.

14 Finally, you stated -- I want to recall your testimony
15 about approving of taking land out of production that might
16 be inefficiently used long enough to secure the capital to
17 make improvements.

18 You wouldn't support taking land out of production for
19 such a period of time that made the land difficult or
20 impossible to return to cultivation, would you?

21 MR. DU BOIS: No. This is one of the problems of
22 fallowing is that capillary action takes place anytime the
23 ground isn't under irrigation, and the salt comes up with
24 the water and the salt stays there and the H2O evaporates
25 and pretty soon you have a piece of ground that you have to

1 leach maybe for quite some time before you can put it back
2 into production.

3 MR. ROSSMANN: Is possible to give an average period of
4 time for which that might be a condition in the Imperial
5 Valley?

6 MR. DU BOIS: I have leached ground, and some ground --
7 that one particular place that I remember had not been
8 farmed for probably six or seven years, and it took a whole
9 year of leaching to get it down to where it would germinate
10 seeds.

11 MR. ROSSMANN: Thank you very much.

12 Those are all the questions I have, sir.

13 CHAIRMAN BAGGETT: Thank you.

14 Farm Bureau.

15 MR. RODEGERDTS: The way we are handling it, may be
16 more appropriate that I ask on redirect rather than cross.

17 CHAIRMAN BAGGETT: I don't know, see if there is any
18 redirect. You are going to do the redirect?

19 MR. RODEGERDTS: Yes.

20 CHAIRMAN BAGGETT: Mr. Gilbert.

21 MR. GILBERT: No.

22 CHAIRMAN BAGGETT: Redirect, Mr. Rodegerdts.

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REDIRECT EXAMINATION OF MR. DU BOIS

BY MR. RODEGERDTS

MR. RODEGERDTS: Mr. Du Bois, do you have any opinion as to how long your thought about a fallowing program to take care of capitalization, the financing requirement how long that would take?

MR. DU BOIS: I think it would depend on the speed with which the District was able to put their system improvements in, the cost of the contract that they let. But an ideal situation would be where the District would lease the ground and rotate the leases to other properties so that it didn't say fallow very long.

MR. RODEGERDTS: That is what I was going to ask you. So how many acres do you think total would be involved if there would be this kind of rotation program?

MR. DU BOIS: I haven't calculated that. It would depend upon the vigor with which the District prosecuted their system changes.

MR. RODEGERDTS: In this example you just cited about knowing of a piece of ground that has been out of production for six years and it took a whole year of leaching in order to get it back to its prefallowing condition, does that leaching technique mean that there was water on that land continuously for that one-year period?

MR. DU BOIS: Yes. We dried it up once to see if it

1 would crack deeply enough to aid in the leaching process,
2 but that was the only time that we removed the water.

3 MR. RODEGERDTS: Do you know over that year period of
4 time with that break how many acre-feet of water was applied
5 per acre for leaching processing?

6 MR. DU BOIS: I am proud to say at that time the
7 District did not charge for the water that you used for
8 leaching and that was in order to encourage leaching so that
9 more ground would be put in production. At that time a
10 great acreage lie fallow in Imperial because it was hard
11 ground and wouldn't grow many crops very well, anyway, and
12 farmers couldn't afford to farm it.

13 And shortly after that, some bright people brought rice
14 into Imperial and they planted thousands of acres of rice
15 and that helped to leach the ground.

16 MR. RODEGERDTS: This particular instance in that year
17 of leaching, about how many acre-feet of water was applied
18 per acre, do you know? Do you have an idea?

19 MR. DU BOIS: I think we ran about a half an acre-foot
20 a day constantly. That would be 150 acre-feet of water.

21 MR. RODEGERDTS: Per acre?

22 MR. DU BOIS: Yes. It was only a 25-acre field.

23 MR. RODEGERDTS: Thank you.

24 CHAIRMAN BAGGETT: Recross.

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RE CROSS-EXAMINATION OF MR. DU BOIS
BY IMPERIAL IRRIGATION DISTRICT
BY MR. OSIAS

MR. OSIAS: Mr. Du Bois, if the Imperial Irrigation District was able to finance system improvements by pledging only the revenue stream from the transfer and with no additional indebtedness to farmers, that would be better for the District than fallowing land, wouldn't you agree?

MR. DU BOIS: I would consider it better.

MR. OSIAS: Thank you.

CHAIRMAN BAGGETT: San Diego.

MR. SLATER: Waive.

CHAIRMAN BAGGETT: Defenders of Wildlife.

MR. FLETCHER: Waive.

MR. ROSSMANN: No more questions, sir.

CHAIRMAN BAGGETT: Farm Bureau no further questions.
Mr. Gilbert.

MR. GILBERT: No.

CHAIRMAN BAGGETT: That is everybody.

MR. RODEGERDTS: Mr. Chairman, we would like to move Mr. Du Bois' exhibits and testimony into evidence at this time.

CHAIRMAN BAGGETT: If there is no objection.

MR. SLATER: No objection.

CHAIRMAN BAGGETT: Entered.

1 conservation industry would provide economic stimulation to
2 the Valley. The new users would get the water that needs
3 to ensure the future and Metropolitan users in Southern
4 California would have a soft landing as they reduced their
5 use of surplus Colorado River water. Everybody wins.

6 It is my hope that the evidence that I present today
7 here today can help make it happen just the way it was
8 intended. As is nearly always the case when we attempt
9 something new, there is a few things that need to be fixed
10 before we get them right. Since this transfer may last for
11 75 years, we need to be certain that nothing important gets
12 botched up. My case in chief will focus on three areas that
13 are extremely important to me and other farmers and
14 landowners in Imperial.

15 First, we have been told that the very involved
16 environmental review process will ensure that there will be
17 no surprises. Impacts will all be discovered in advance so
18 we can collectively decide if the transfer is acceptable
19 before it is begun. However, the past tells us that we
20 cannot accurately predict the future. And we in Imperial
21 cannot afford the risk of a future determination that
22 unexpected impacts need rectifying at our expense. We must
23 be indemnified and fully protected against claims for
24 impacts to persons, property and the environment. It is
25 neither just, fair nor right that we risk our livelihoods,

1 our businesses or our farms to transfer water to others.

2 Second, the price received for the water needs to be
3 sufficient to cover the costs of conserving it. We are
4 obligating ourselves to some very expensive conservation.
5 We need assurance that our price will be reasonably
6 predictable, will not drop unexpectedly and will not trap
7 our water users in a long-term loss situation.

8 Our testimony will show that the price redetermination
9 feature of the agreement introduces unacceptable uncertainty
10 and risk. We will show that it is not suitable mechanism
11 for establishing price for this transfer for as many as 65
12 of the 75 years that it may be in effect. Farmers are not
13 at all keen on selling on consignment and especially when
14 there is a big chance that provision will cause the price to
15 be below the cost of producing the water.

16 And third, the conservation plan must do what it is
17 expected to do. This is not a simple task. Farmers are
18 innovated when motivated. If there are loopholes, the
19 farmer will find them. If politics are involved, strange
20 things can happen. This is a complex task. It is a
21 daunting undertaking, and it will take time, and time is
22 something that we have very little of in this case,
23 especially if this transfer is going to be in effect by the
24 end of this year.

25 This job needs to be on the front burner. It will take

1 a lot of concentrated effort by a lot of people to get it
2 right before that deadline. The conservation plan proposed
3 by the IID in November and December of last year has some
4 serious flaws and needs to be fixed. Our testimony will
5 point out some of those flaws and offer some suggestions
6 that we think will work. If we rush into this and make a
7 mess, we will have a long time to regret it.

8 I would like to call my first two witnesses and exam
9 them on direct examination.

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11 DIRECT EXAMINATION OF LARRY GILBERT PANEL

12 BY MR. GILBERT

13 MR. GILBERT: Have either of you been sworn yet?

14 (Oath administered by Chairman Baggett.)

15 MR. GILBERT: Thank you.

16 I would like to start with Jim Walker.

17 Jim, would you please state your name and spell your
18 last name for the record?

19 MR. WALKER: James Walker, W-a-l-k-e-r.

20 MR. GILBERT: Thank you.

21 Would you refer to the document there that is labeled
22 Gilbert 9 and tell us what it is?

23 I hope it is there.

24 MR. WALKER: That is a copy of my written testimony.

25 MR. GILBERT: Have you had a chance to review it

1 recently?

2 MR. WALKER: Yes, I have.

3 MR. GILBERT: To the best of your knowledge, is it a
4 true and accurate copy of your testimony and you state that
5 under penalty of perjury?

6 MR. WALKER: To the best of my knowledge, it is a true
7 and accurate copy.

8 MR. GILBERT: Would you briefly describe your
9 educational background?

10 MR. WALKER: I have a degree in history from Stanford
11 University, and after that I attended the University of
12 Arizona for one year studying primarily business and
13 agricultural subjects which included a course in irrigation
14 practices.

15 MR. GILBERT: Since finishing that college work what
16 kind of work have you been doing?

17 MR. WALKER: I have primarily operated irrigated
18 farming in Imperial Valley.

19 MR. GILBERT: During your tenure as a farmer have you
20 been active in any farm organizations?

21 MR. WALKER: Farm Bureau and the Imperial Irrigation
22 District Water Conservation Advisory Board.

23 MR. GILBERT: Are you on any committees for the Farm
24 Bureau?

25 MR. WALKER: I'm on the water committee.

1 MR. GILBERT: When did you first become interested in
2 water conservation?

3 MR. WALKER: Well, my father and his parents were early
4 pioneers in Imperial Valley, and he instilled in me from an
5 early age that water was very valuable and should not be
6 wasted.

7 MR. GILBERT: That's a while ago.

8 Are you familiar with the conservation plan that was
9 presented by IID in public workshops held in El Centro on
10 November the 19th and December the 17th of last year that
11 was titled IID On-Farm Workshop?

12 MR. WALKER: I am familiar, yes.

13 MR. GILBERT: Were you present at either of those
14 workshops?

15 MR. WALKER: I was present at both of them.

16 MR. GILBERT: Would you look on the table in front of
17 you and find the item marked Gilbert 5 and tell us what it
18 is?

19 MR. WALKER: It is presentation of the IID On-Farm
20 Workshop from November 19th, 2001.

21 MR. GILBERT: Have you had a chance to look it over?

22 MR. WALKER: Yes, I have.

23 MR. GILBERT: Do you believe it to be a true and
24 accurate copy of the proposal that they presented at that
25 time?

1 MR. WALKER: I do.

2 MR. GILBERT: Also, would you look at the document
3 marked Gilbert 4 and tell us what it is?

4 MR. WALKER: It is also a presentation of the IID
5 on-farm workshop from December 17th, 2001.

6 MR. GILBERT: As far as you know, and you have looked
7 it over, is it a true and accurate copy of what they
8 presented at that time?

9 MR WALKER: Yes.

10 MR. GILBERT: Is there any part of that plan that gives
11 you special concern?

12 MR. WALKER: Yes. The allocation of water to
13 individual headgates based on history from the period of
14 1987, water use history from 1997 to 1995 concerns me.

15 MR. GILBERT: Can you explain why that is of special
16 concern to you?

17 MR. WALKER: Well, in my case it is a concern because
18 my history is a little bit low based on the fact that I was
19 under the impression we were supposed to use water
20 conservatively during that period. The Imperial Irrigation
21 District had been issued Decision 1600 from this Board to
22 conserve water. And as a result of this, they came up with
23 several different programs to encourage conservation among
24 farmers. Some of them based on penalties for excess runoff
25 from the fields.

1 MR. GILBERT: Do you by chance have a field that might
2 have an especially low baseline allocation?

3 MR. WALKER: My family has an interest in a field that
4 has nine-tenths of an acre-foot allocation.

5 MR. GILBERT: How did you learn of the size of that
6 allocation?

7 MR. WALKER: The Imperial Irrigation District has this
8 information.

9 MR. GILBERT: Can you farm that field with less than a
10 foot per year?

11 MR. WALKER: I would think it would be extremely
12 difficult to do so profitably.

13 MR. GILBERT: Is this field actively farmed presently
14 and in the last few years?

15 MR. WALKER: Yes, it has.

16 MR. GILBERT: You referred to generally the fields on
17 your farm that seem to have baselines that are a little bit
18 small. Would their productivity be restricted with the
19 size, the amount of the baseline that they have available?

20 MR. WALKER: Yes, they would be. I can give details if
21 I could refer to my notes for a moment.

22 MR. GILBERT: Sure.

23 MR. WALKER: Based on the average baseline that I have
24 been given by the Imperial Irrigation District, I could not
25 grow alfalfa or Bermuda grass on any of my fields. I could

1 only grow onions on 50 percent of my acreage. I cannot grow
2 Sudan grass in any one year on 17 percent of my acreage. I
3 couldn't follow lettuce or sugar beets with Sudan grass in
4 any one year. I could only follow lettuce with wheat on
5 half of my acres in one year.

6 MR. GILBERT: Are those crops and practices that you
7 have been engaging in?

8 MR. WALKER: Yes.

9 MR. GILBERT: Other than simply providing water for the
10 crops, is there another important need for water on these
11 fields?

12 MR. WALKER: Yes. We need water to leach the salts
13 from our fields, otherwise the salt would build up to the
14 point where we couldn't farm the ground.

15 MR. GILBERT: You found that your water use history was
16 below average for the District?

17 MR. WALKER: That is correct, yes.

18 MR. GILBERT: Where does the average figure come from?

19 MR. WALKER: I got that from the EIR.

20 MR. GILBERT: How much was that?

21 MR. WALKER: 5.63 acre-feet per acre, I believe.

22 MR. GILBERT: Did you personally do anything to cause
23 your own water use on your fields to be low?

24 MR. WALKER: I did. Would you like for me to describe
25 some of the things I did?

1 MR. GILBERT: Yes, please.

2 MR. WALKER: I kept very accurate records of each
3 individual irrigation and referred back to them. When it
4 was time to irrigate a field again, I would sample the soil
5 moisture in the fields before I ordered water. I counseled
6 my employees on the need to run water efficiently with mixed
7 results. I tried irrigating my wheat crops less than I had
8 been. That did not work out very well.

9 Those are the things that come to mind at the moment.

10 MR. GILBERT: Were there other external pressures on
11 you to be especially judicious with your water use during
12 the period that IID has proposed to use for the baseline?

13 MR. WALKER: Well, I was aware of a requirement in
14 Decision 1600 for everyone in IID to be conservative. And
15 the IID did institute some programs that penalized
16 individual farmers if they had too much runoff from their
17 fields.

18 MR. GILBERT: Can you explain the water conservation
19 Advisory Board's role in that process?

20 MR. WALKER: The Water Conservation Advisory Board, as
21 I understand it, implemented several different programs. I
22 think the 13 point program, the 21 point program and the 15
23 point program which included water efficiency measures and
24 also penalties for using water inefficiently based primarily
25 on wasting their -- running too much off the end of a

1 field.

2 MR. GILBERT: Would you look at the document marked
3 Gilbert 13 and tell us what it is?

4 MR. WALKER: It appears to be the first page of the
5 bylaws of the Water Conservation Advisory Board.

6 MR. GILBERT: Does that include the purpose for that
7 Board?

8 MR. WALKER: It does.

9 MR. GILBERT: Mr. Chairman, for the record the complete
10 bylaws for the Water Conservation Board is included in IID
11 Exhibit No. 51. And the program, the original 13 point
12 tailwater program that Mr. Walker referred to is also
13 included as IID Exhibit No. 52.

14 Have you been a member of the Water Conservation
15 Advisory Board?

16 MR. WALKER: I have been for a member of the Water
17 Conservation Advisory Board for approximately ten years, and
18 I am now the president of that organization.

19 MR. GILBERT: Would you say that following IID's policy
20 in being efficient with your water is something that IID now
21 might penalize you for doing?

22 MR. WALKER: It would appear that that's the case,
23 yes.

24 MR. GILBERT: Was it your observation during the period
25 of time being considered for the baseline that your

1 neighborhood farmers put the same effort into complying with
2 those regulations that you did?

3 MR. WALKER: I got the impression in looking over some
4 of the farming operations that maybe they weren't being
5 quite as diligent as I was. And I know, as we got into the
6 '90s, we began to hear rumors that possibly water history
7 might be valuable.

8 MR. OSIAS: Objection. I think rumors fall outside
9 even the broad scope of admissible evidence that this Board
10 allows.

11 CHAIRMAN BAGGETT: Sustained.

12 Can you reask?

13 MR. GILBERT: Did you hear evidence or see evidence
14 that some of your neighbor farmers were not putting the
15 effort into it that you were in being efficient?

16 MR. WALKER: Yes, I did.

17 MR. GILBERT: If this transfer, the problems that you
18 see with it could be fixed, what would be your position on
19 the transfer?

20 MR. WALKER: My position on the transfer has always
21 been that it was worthwhile and should be pursued. If some
22 of the problems I see were corrected, then I would be much
23 better able to participate in the transfer and conserve
24 water for the transfer.

25 MR. GILBERT: Would you be willing to do that?

1 MR. WALKER: Yes.

2 MR. GILBERT: Is there anything else you would like to
3 add to your testimony?

4 MR. WALKER: Only that I have some concern with the
5 concept of a voluntary participation. If the results are
6 implemented as has been presented in the workshops, I
7 couldn't participate because of my low water use history. I
8 would be outside the program to participate and possibly I
9 might use more water than I have in the past.

10 If the District gets into an overrun situation where
11 water has to be paid back to the Bureau of Reclamation, then
12 I think it would affect everyone in the Imperial Irrigation
13 District, people in the program who have been overusing over
14 their baseline and people outside the program would also be
15 forced to use less and to pay back. In that case it is not
16 voluntary.

17 MR. GILBERT: Thank you.

18 If it's okay, I would go into the direct questioning
19 for the second witness.

20 CHAIRMAN BAGGETT: Please continue.

21 MR. GILBERT: Mike, would you please state your name
22 and spell your last name for the record?

23 MR. M. COX: My name is Michael B. Cox. My last name
24 is C-o-x.

25 MR. GILBERT: Could we move the microphone over in

1 front of you.

2 MR. M. COX: I am Michael B. Cox. My last name is
3 C-o-x.

4 MR. GILBERT: Referring to the document on the table
5 marked Gilbert 10, could you tell us what this is?

6 MR. M. COX: The testimony statement that I prepared.

7 MR. GILBERT: Have you had a chance to examine it
8 recently?

9 MR. M. COX: Yes.

10 MR. GILBERT: Is it, to the best of your knowledge, a
11 true and accurate copy of your testimony and would you so
12 state under penalty of perjury?

13 MR. M. COX: Yes, it is a true and accurate copy.

14 MR. GILBERT: Thank you.

15 Would you briefly describe your educational
16 background?

17 MR. M. COX: I have a Bachelor in Science degree in
18 farm management from Cal Poly San Luis Obispo.

19 MR. GILBERT: Since you completed your college, how
20 have you been employed?

21 MR. M. COX: I worked five months on my father's farm
22 and then we formed a partnership that subsequently became a
23 corporation, and I bought him out and have been farming
24 continuously in that business since then.

25 MR. GILBERT: Do you also have an ownership in

1 farmland in the Valley?

2 MR. M. COX: Yes, I do through -- with my brothers and
3 sisters I have an undivided quarter interest in several
4 parcels of farmland as well as a stockholder in the business
5 that my father started.

6 MR. GILBERT: Are you both a tenant and a landowner,
7 then?

8 MR. M. COX: Yes, I am. The basis for my statement
9 that I prepared is the experiences as a lessee, as a
10 tenant.

11 MR. GILBERT: While farming have you been active in
12 farm organizations and farm boards?

13 MR. M. COX: Yes. I have been a member of CalCot,
14 California Beet Growers Association, Western Growers
15 Association. I have been -- currently I am a director of
16 the Imperial County Cotton Pest Abatement District and I
17 certainly serve as president of the Imperial County Farm
18 Bureau.

19 MR. GILBERT: Have you had an interest in water use
20 practices during your farming career?

21 MR. M. COX: Yes, I did. Started with interest, keen
22 interest, in drainage issues, particularly the New River.
23 Two of the first five years I was farming, due to tropical
24 storms, we had a flooding situation on the New River. And
25 subsequent to that the increased elevation the Salton Sea

1 impacted the fields I was farming and caused some things in
2 IID to change the way we farm.

3 MR. GILBERT: Are some of your fields very close to the
4 Salton Sea?

5 MR. M. COX: Yes, I have had occasion in the past to
6 lease fields that were close enough that the only surface
7 runoff had to be pumped out with a lift pump.

8 MR. GILBERT: Have the return flows to the Salton Sea
9 impacted all of IID water users?

10 MR. M. COX: Certainly. The return -- the increased
11 elevation of the Salton Sea has caused the District to be
12 involved in lawsuits regarding the flooding. There has been
13 costs involved with raising the dikes at the Sea,
14 maintaining those dikes, installing lift pumps for both
15 tailwater and tile water, as well as regulatory issues in
16 trying to get a handle on the surface runoff.

17 MR. GILBERT: Did IID's water users have regulatory
18 reasons for being as efficient as practical?

19 MR. M. COX: I don't understand the question.

20 MR. GILBERT: Did IID implement any rules regarding
21 tailwater or return flows?

22 MR. M. COX: Yes. As Mr. Walker talked about, I
23 believe it started with the 13 point program which a lot of
24 us refer to as the triple charge, which the main enforcement
25 part of that was measuring our surface runoff, and if it

1 exceeded certain parameters there was a penalty or
2 assessment levied against the water order.

3 MR. GILBERT: Did these regulations cause you to do
4 anything differently?

5 MR. M. COX: Yes, we began to more intensively try to
6 regulate the control, the surface runoff, through use of
7 portable pump back system, use of -- they are called
8 C-tests, a dike you put in the furrows to try and hold the
9 water higher and sub into the bed for our row crops. We
10 used sprinkler germination at times, which uses less water
11 than furrow germination.

12 MR. GILBERT: Had you heard or seen evidence that
13 indicated whether that all the other farmers in the District
14 put the same effort into their water use that you did?

15 MR. M. COX: No. It is pretty evident through looking
16 at some neighboring farmers that they continued to operate
17 as they had in the past, setting the water in the morning
18 and no one would be around to regulate, and it would just
19 run at the regular 24-hour course no matter what time it got
20 on the field. Use the same number of foot on each order
21 regardless of whether the ground was drier than it had been
22 the previous irrigation.

23 MR. GILBERT: Do the fields you irrigate have a natural
24 or maybe a modified slope to aid in irrigation?

25 MR. M. COX: The fields that I farm all have been

1 leveled at some point in the past to a modified slope to
2 control both the main fall and the side fall.

3 MR. GILBERT: They all slope towards a lower end of the
4 field?

5 MR. M. COX: Right. There is a drain box established
6 in using one of the corners of the field which is used to
7 control the runoff, and, also, that is where IID takes a
8 measurement of the surface runoff and where the drain water
9 enters one of the IID drains or maybe directly into the
10 river or the Sea.

11 MR. GILBERT: Does furrow irrigation need more
12 tailwater than flood irrigation?

13 MR. M. COX: I believe it does. In the furrow
14 irrigation you're only running water in a small portion of
15 the farmed area, the bottom of the furrow. You need
16 opportunity time for that water to sub up or wick its way up
17 into the bed to provide moisture.

18 For instance, in germination you need to get it up
19 toward where the seed is planted to germinate. Or you might
20 need to just push the fertilizer in a little bit there or
21 into the root zone.

22 MR. GILBERT: Does it also affect how long it would
23 take to completely fill the root zone?

24 MR. M. COX: Yes, it does. You are putting on --
25 depending on the depth of the roots and the time of the

1 crop, you just may take longer to push that water down to
2 the full depth of the roots.

3 MR. GILBERT: Is this because only a small portion of
4 the surface area has water on it?

5 MR. M. COX: Right. You may have a sugar beet that is
6 in the middle of a 30-inch bed and the water is running 12
7 to 15 inches away and it takes time for that water to move
8 up into the bed. Your water in every other field may be
9 running for 24 hours, but it is only running six or ten
10 hours on the lower end of the field.

11 MR. GILBERT: Thank you.

12 Have you seen evidence in the Irrigation District that
13 water use efficiency could be improved?

14 MR. M. COX: Sure. I've seen -- having had experience
15 with farm fields that were on canal that had lateral
16 interceptors on them, and that allowed me to have that water
17 for less than a full 24-hour time period. When I was done I
18 could call the District and they would arrange to have that
19 water turned off, have delivery stopped within a couple
20 hours of when I called in. So there may be times when I
21 needed the water on the field 14 hours, 16 hours, and I
22 could turn it off.

23 The other fields that were not set up that way, I was
24 pretty much obligated to take that water for the full
25 24-hour order time.

1 MR. GILBERT: Does all of the District's delivery
2 system have those lateral interceptors?

3 MR. M. COX: No. I know a big portion don't. The
4 lateral interceptors that I am aware of were funded and
5 constructed as part of the MWD conservation agreement.

6 MR. GILBERT: In your testimony you listed some items
7 that in your opinion are necessary for an on-farm
8 conservation program to be successful. The first has to do
9 with the financing needed to -- has to do with financing
10 that needed improvements with borrowings. Can you explain
11 your statement about that and I think you are referring to
12 landowners?

13 MR. M. COX: The point I was trying to get across was
14 that the landowners, particularly the absentee landowners
15 of which perhaps a majority of the farm ground in Imperial
16 is owned by people that don't live in the Valley, don't farm
17 the ground themselves, but they just lease it out. They are
18 looking to maximize the return on their investment on their
19 ground. They are trying to get the best rent they can for
20 that ground, and they are not really looking to invest in a
21 long-term capital water conservation project which would
22 return at maybe the most only just a small amount over what
23 the actual cost of conservation would be.

24 MR. GILBERT: Thank you.

25 Is the term proposed for the transfer, the 75 years,

1 important to you?

2 MR. M. COX: I'm daunted by the term of the agreement.
3 I am concerned because the current exchange agreement is
4 only for 30 years. I'm also concerned because I
5 realistically expect to be around for another 25, 30 years,
6 but I don't want to obligate my heirs to something that is
7 going to last a lot longer than I'm going to be around. And
8 many of the water conservation methods that have been
9 studied to provide this water may only have an operational
10 life of 25 years or less. You have to be replacing it.

11 MR. GILBERT: If you were to receive compensation for
12 water conservation and for that compensation you were not
13 required to improve your water use efficiency, and you could
14 comply by reducing your use of water or your deliveries, how
15 much would you do to improve your irrigation efficiency?

16 MR. M. COX: Probably not as much as I would by just
17 reducing the water usage. I'm a businessman. I'm elected
18 to do what is going to be most cost-efficient for me.

19 MR. GILBERT: In your testimony you referred to an
20 allocation to the headgate based on historical use. Can you
21 explain the term "headgate"?

22 MR. M. COX: When I use the term "headgate," that is
23 the delivery gate connecting my field ditch to the IID canal
24 system, and that is where measurements are taken when they
25 deliver the water to me. Those headgates have a canal name

1 and number assigned to them.

2 MR. GILBERT: Would that be similar to an allocation to
3 a parcel?

4 MR. M. COX: It would be similar. Sometimes there are
5 several parcels that all receive water through one
6 headgate.

7 MR. GILBERT: And in that statement about the
8 allocation to a headgate based on historical use, you are
9 referring to what the District had proposed in November and
10 December of last year?

11 MR. M. COX: That's correct.

12 MR. GILBERT: Were you present at those workshops?

13 MR. M. COX: I was present at both those workshops and
14 I have copies of the Power Point presentation they made.

15 MR. GILBERT: Can you explain how that allocation to
16 the headgate feature would work, how it would impact the
17 most efficient farmers?

18 MR. M. COX: I believe that the most efficient farmers
19 would be penalized if IID implemented allocating water from
20 the headgate based on historical use, because the
21 historically efficient farmers would have minimized or
22 reduced the surface runoff, found ways to farm with less
23 water and, therefore, would have a lower historical use on
24 those parcels.

25 MR. GILBERT: Can you explain how cotton growers might

1 be impacted if this method were used to allocate water to
2 their farms?

3 MR. M. COX: I think there is two ways that cotton
4 parcels and cotton growers would be impacted. One, during,
5 I believe, during the entire part, entire term, that the IID
6 historical use is based upon there was a -- excuse me a
7 minute -- there was set aside requirements that mandated
8 fallow acreage to participate in federal farm programs for
9 cotton and also for wheat during the base years of 1987 to
10 1995. Those percentages is varied. Some years it may have
11 been 5 percent years of the planted acres, some years may
12 have been 20 to 30 percent. Part of that ground set idle
13 and may have been the entire parcel.

14 For instance, if I farmed -- if I had cotton on 40
15 fields which totaled 300 acres, I may have been required to
16 set aside 50 acres, and all of that could have been on one
17 parcel. So it meant that one parcel would have no
18 historical use for that particular year.

19 MR. GILBERT: Were there any local regulations that
20 might have affected cotton growers during that period of
21 time?

22 MR. M. COX: Right. During the entire length of the
23 IID historical use period, 1987 to 1995, we did have local
24 regulations which were called the short season plow down
25 requirements. Cotton was required to be chemically

1 terminated by September 1. This was an effort to control
2 pink bollworm, and it had to be plowed down by November 1.
3 Previous to these regulations being implemented,
4 historically cotton would be defoliated in October, November
5 and picked by the end of the year. There had been some
6 previous plow downs in January. But that usually meant that
7 you would irrigate the cotton until the middle of September
8 or so.

9 With the short season regulations, if you had to
10 defoliate or chemically terminate the cotton by September 1,
11 you used to pull the water in early August or the middle of
12 August at the latest, so it wouldn't be in a state of
13 vegetative growth or vigor at the time you were trying to
14 defoliate.

15 This artificially shortened the growing season of the
16 cotton by a month to six weeks. And in the last -- those
17 regulations are no longer in effect. We now can plow down
18 our cotton by December 31. In the last two years I have
19 been watering my cotton until the middle or late part of
20 September, and I'm using three more irrigations and over a
21 foot of water extra per acre than I was under the short
22 season regulations.

23 MR. GILBERT: Thank you. We are going to need to hurry
24 to get the rest of these questions in time.

25 Are there good reasons why farmland does not produce a

1 crop during every month of the year?

2 MR. M. COX: Yeah. We have crops that may only take
3 four, five months from planting to harvest. And it takes
4 time to prepare that ground for the subsequent crops.
5 Sometimes you need deep ripping and then put on a follow-up
6 leaching irrigation. Certainly, we can't plant the sugar
7 beets any time of the year. They need to be planted in the
8 fall. The cotton needs to be planted in the spring. So
9 there is gaps between crops.

10 MR. GILBERT: What are the effects of the leaving the
11 land idle for a long time?

12 MR. M. COX: For a period of a year or so, you can
13 actually have some beneficial results. For instance, on
14 that set aside ground in the cotton, when we would put the
15 following crop in that ground that actually sat out for a
16 year would be a little more fertile than the ground that had
17 been in cotton. I think there is a breakdown, a natural
18 breakdown of the soil that releases certain nutrients. But
19 as Mr. Du Bois was talking about, if you leave it out for
20 longer than a year or two, the salt begins to be left as a
21 deposit near the surface for the capillary actions and
22 begins to degrade.

23 MR. GILBERT: There has been talk of cost of
24 environmental mitigation as high as a billion dollars or
25 maybe even more.

1 Can you put into perspective what a claim of a billion
2 dollars would mean to Imperial Valley agriculture?

3 MR. M. COX: I think it would bankrupt us. If you take
4 the total acreage that we farm and multiply it by the
5 average value of the ground, it is barely a billion dollars.
6 So you are talking about the entire value of the farmer.

7 MR. GILBERT: There's been comments about potential
8 liability and the need that some people feel for this. Have
9 you done anything to express that concern to anyone recently?

10 MR. M. COX: Yes. I sent a letter as president of the
11 Farm Bureau to Mr. Baggett saying that it is imperative that
12 farmers, landowners and farmers within Imperial Irrigation
13 District not be held responsible and must be indemnified
14 against any claims involving environmental, property or
15 personal damages arising from this transfer that is being
16 discussed.

17 MR. GILBERT: So do you feel that is very important?

18 MR. M. COX: I believe it is essential. We can't
19 proceed with that potential of damage claims hanging up
20 there.

21 MR. GILBERT: Just a couple questions. If the
22 problems that you see with the transfer are fixed, what
23 would your position be on the transfer?

24 MR. M. COX: Similar to what Mr. Walker talked about,
25 Mr. Du Bois. We have not been opposed to transfer of water.

1 We have been opposed to the conditions under which the
2 transfer is being proposed. I'm concerned about the terms
3 and we need the indemnification. I really don't -- you
4 know, we'd like to see the baseline not be based upon
5 historical use for the reasons I talked about.

6 But as citizens of California we realize the need for
7 water in the state and that we are prepared to stand up and
8 do our part. We need to make sure that we are taken care
9 of.

10 MR. GILBERT: Thank you.

11 That is all. I presume that you want to take a break
12 for lunch. If not, I am prepared to do my direct
13 examination after or before.

14 CHAIRMAN BAGGETT: Of yourself? That will be a
15 challenge.

16 Let's do it -- I think at this point I am committed to
17 do something a quarter till. Let's try to get the direct
18 out. I won't be back until two. We are going to take quite
19 a break. Let's finish the case in chief, so you are up.

20 Unless there might be no cross-examination here, then
21 we can just -- no.

22 Wishful thinking.

23 MR. GILBERT: Thank you, Mr. Chairman.

24 In order to avoid the kind of awkward situation of
25 asking myself questions, I will try to make my direct

1 examination statements kind of like they would be if I were
2 answering questions.

3 CHAIRMAN BAGGETT: Summarize your testimony,
4 basically.

5 MR. GILBERT: My name is Larry Gilbert, G-i-l-b-e-r-t.
6 There are a few corrections that I would like to make to the
7 document marked Gilbert 12, which I have reviewed and is my
8 testimony and with the corrections I would be glad to state
9 under penalty of perjury that it is true and correct.

10 On Page 5, Line 12, where it lists evidence item eight,
11 it should read exhibit items one, two and eight.

12 And on Page 6, Line 9, Exhibit 13 is misidentified.
13 That exhibit is actually part of the bylaws of the Water
14 Conservation Advisory Board, which includes the purpose of
15 that Board.

16 On the same page, on Line 14, the December 20, 1979,
17 resolution of the Water Conservation Advisory Board was
18 omitted as part of my exhibits. It is, however, IID's
19 Exhibit No. 52.

20 On Page 11, Line 2, the word "fallowing" was supposed
21 to have been "idling."

22 And on the same page, Line 14, the word "fallowed"
23 should be idled.

24 My education includes a Bachelor's of Science degree in
25 agronomy at Cal Poly in Pomona. After college, I returned

1 to the family farm and soon began farming full-time for
2 myself. I am both a renter and a landowner of land in the
3 Imperial area, have been active in several farm
4 organizations and boards including the Imperial Farm Bureau
5 and also some at the California Farm Bureau level. Was a
6 member of Board of Trustees of the Imperial Unified School
7 District for two four-year terms and other activities.

8 I have been interested in water conservation since I
9 found that my tailwater was washing gullies in some of my
10 alfalfa fields, and I needed to do some remedification to
11 the lower lends in order to prevent that, and I had to take
12 better care of my water.

13 I am an original member of the Water Conservation
14 Advisor Board and was the second chairman of that Board and
15 have been a member for several years, but there was a gap in
16 my membership. I am also a member of the Farm Bureau Water
17 Committee and am currently serving as chairman of that
18 committee. Have been invited speaker to the United States
19 Committee on Irrigation and Drainage and also the California
20 Irrigation Institute.

21 The first thing I want to discuss in my testimony
22 regards the liability claims and the agreement provides for
23 off-ramps which allows for termination of the transfer in
24 case the estimated costs exceed the limits specified. But
25 to my knowledge it does not protect us against oops or

1 against the realization that unexpected impacts did occur
2 and that someone needs to pay for these impacts or damages.

3 I do not think it is worth risking our farms, our
4 businesses or our livelihoods to transfer this water. In my
5 opinion we must be protected and indemnified against claims
6 to persons, property or the environment that arise from our
7 good faith fulfillment of these contracts. If such
8 indemnification is not obtained, I would be completely
9 opposed to the transfer.

10 Regarding the conservation plan, that is something that
11 is very important to me as a farmer and a landowner and
12 lifelong community member. IID has not yet adopted a plan,
13 but they have presented a proposal during November and
14 December as mentioned earlier. Also, additional evidence of
15 that is included in my Exhibit No. 6, which I have examined
16 and believe to be a true and accurate copy of a letter that
17 I received, answering questions about that plan, and would
18 do so under penalty of perjury.

19 There are some things that are very troubling to me
20 about the plan. It proposes to measure on-farm conservation
21 only by the amount of water the farm diverts. I as a farmer
22 can generally be expected to use a conservation method that
23 provides me the greatest financial reward. And my written
24 testimony relates my farm's actual water use and the value
25 of that water both from the landowner and tenant's point of

1 view. And when faced with a choice of cost of the lost
2 revenue or lost profits from the land as opposed to the cost
3 of implementing efficiency measures, my choice is abundantly
4 clear. I will reduce my water use long before I spend money
5 to do expensive conservation measures.

6 Whether that would fulfill the agreement with the
7 Authority is something that is in question. The contract
8 does prohibit fallowing, but the definition of fallowing
9 seems to be very illusive. It has not been defined yet. In
10 my opinion, it will not be defined in a way to prohibit
11 reduced farming as a means of conserving because I do not
12 see that it is possible to differentiate between the methods
13 used for conserving water and the same methods that are used
14 in routine farm practices.

15 My testimony further points out that the value of the
16 water for agriculture use would not motivate anyone to save
17 a significant amount of water by improving their
18 efficiency. And since maintaining agricultural output has
19 been publicly stated as an important goal of this transfer,
20 I believe that the method of obtaining on-farm conservation
21 needs to be revised.

22 IID's proposal to allocate water to each parcel has
23 been described. I think there are two main reasons in my
24 case why I feel that would be a serious problem. One is
25 that it does not consider efforts that have been made to

1 improve the farmability of the ground. In my case our
2 family has invested, since the period of time to be covered
3 by the allocation baseline, has invested considerable effort
4 into reclaiming our soil, washing the salts out of it. I
5 have included Exhibits 1, 2 and 8 that list some of the tile
6 lines that have been installed. I think they total up to
7 over a hundred thousand feet that have been installed on our
8 ranch since that period of time. And if -- well, by
9 installing that tile we make our land more productive, make
10 it so that it is likely to use more water and would be
11 farmed more intensively, and that would not be possible. We
12 would lose the value of that investment if that baseline
13 period were used.

14 Another reason is that this is a reversal of IID's own
15 policies. We have had testimony already that IID's policy
16 were that we use our water efficiently, and that was in
17 effect during that entire nine-year period. And to now base
18 our allocation on our use during that period would be a
19 reversal of that policy and would harm the most those people
20 that were most effective in complying with those
21 regulations.

22 I want to also address Exhibit No. 3, which is titled
23 Farm Bureau Conservation Plan. I have reviewed this
24 document recently and to the best of my acknowledge it is a
25 true and accurate copy of a plan adopted by the Imperial

1 Valley Farm Bureau as a recommendation to IID, and I would
2 so state under penalty of perjury.

3 Realizing the importance of a conservation plan, the
4 Farm Bureau Water Conservation Committee spent many hours
5 discussing this issue, and after several meetings developed
6 the plan that you see as Exhibit No. 4. That is expected to
7 produce the water to be transferred by improving our water
8 use efficiency within the IID. It includes the same
9 improvements to IID's delivery system as IID had proposed.
10 It also includes a voluntary on-farm incentive program to
11 increase the farm's water use efficiency that would be
12 available for all farms to participate in. It also proposes
13 to fund on-farm special projects on an individual voluntary
14 basis that would be based on the estimated cost of
15 conservation. It includes some fund for research and
16 extension to help us find and demonstrate the most effective
17 ways to improve our productivity and our efficiency.

18 At the time that we developed that, we realized that
19 the transfer could be abruptly terminated. That the
20 agreement does not provide up-front money to fund capital
21 projects in advance of their producing conserved water, and
22 we have no knowledge of potential sources of up-front money
23 to do that. Thus, the plan included a proposal to
24 temporarily idle farmland to provide conserved water and
25 ensure that the IID use remains below its 3.1 million acre

1 cap that it is proposing. This plan would not take water
2 from any water user without fair compensation, and all the
3 remaining revenue would be available to fund conservation
4 measures.

5 This part of the plan was a result of choosing the
6 lesser of two evils. We did not want to reduce farm
7 production, but we really did not want to risk maybe
8 hundreds of millions of dollars that the transfer would not
9 be prematurely terminated. It is expected to conserve all
10 the water needed for transfer out of IID by efficiency
11 improvements and keeps us below the legal cap that we are
12 providing.

13 I would like now to turn to my Exhibit No. 11; it is
14 identified in the index of exhibits. Unfortunately, it was
15 not marked as an Exhibit 11. I would ask that that be
16 done. It is the eight-page document that has the first
17 three pages are printing and the last five pages are copies
18 of spreadsheets. It is titled Price Redetermination.

19 It would be very useful if we would be able to put
20 these spreadsheets on the screen in just a couple of
21 moments. I have looked that over and there are a couple of
22 corrections that I do need to make.

23 The first one is on Page 3, at the very top of the
24 page. The number \$206 is incorrect. That should read
25 \$412. And also the first --

1 CHAIRMAN BAGGETT: That is where it says upper limit?

2 MR. GILBERT: No. That is at the top of Page 3,
3 transactions is doubled \$206. That is on the typewritten
4 page.

5 CHAIRMAN BAGGETT: Page 3 of the text?

6 MR. GILBERT: Yes, of the text.

7 CHAIRMAN BAGGETT: As opposed to chart?

8 MR. GILBERT: Not on the chart.

9 CHAIRMAN BAGGETT: 400 and?

10 MR. GILBERT: Should be 412.

11 And the first spreadsheet, E-1, has some blurring in
12 it, and I do have some copies that are not blurred that I
13 will make available later.

14 I have examined the -- other than that, I do believe
15 that is a true and correct copy of my statement and would so
16 state under penalty of perjury. This addresses the issues
17 in the agreement of price. Redetermination it is covered in
18 Article V and also Exhibit E.

19 It is possible that this can take effect after the
20 first ten years of the transfer if certain conditions are
21 met. What it does is it analyzes certain characteristics of
22 the water, namely the reliability of the supply, the TDS
23 quality and the vintage or age of the contract at the time
24 that it is analyzed. It does not include an analysis of how
25 the water is conserved. And it could possibly be included

1 in there under certain circumstances, but I feel that
2 omitting that could be a very big problem because how the
3 water is conserved may contribute greatly to the cost of the
4 water and the price that would be received for the
5 conservation.

6 I want to show that when you analyze trades with no
7 Lower Colorado River water in them, the price has a great
8 deal of unpredictability. And when you include trades that
9 have Lower Colorado River water, the price is very strongly
10 affected by the price of the Lower Colorado River trades.
11 The prices in these are fictitious prices, but they are of
12 plausible water transfers. They were furnished to us by IID
13 in response to questions about how this mechanism would
14 work.

15 Looking at the first sheet, and maybe it would be
16 better if I can get the pointer. Just a very brief
17 explanation of what we are looking at. The area at column
18 B-five, the expected value of IID water is listed on row
19 six as \$342. That is not the actual price that IID water
20 would be repriced to. However, for our purposes it
21 indicates what the process does.

22 Looking down here on the left where it says
23 transactions on column A, row 14, there is a list of ten
24 plausible transactions included there. The net value and
25 the column B is the net value as determined under the

1 provisions of the contract for those ten transactions. The
2 reliability is a measure of how reliable the water supply is
3 based on the hydrology, the underlying water right and other
4 none hydrologic factors, and it is expressed as a
5 percentage of one.

6 TDS is a measure of the water quality, and TDS vintage
7 is the number of years since the contract became in effect.
8 The zero year price takes out the guesswork as to how much
9 of the pricing is done by inflation or deflation and how
10 much is done by other factors.

11 Looking right up here in the middle of the contract,
12 the average zero year price in this case of these ten
13 transactions is \$291. And as you see in the upper left, the
14 expected value of IID's water is \$342.

15 Now if we can go to the one marked number two. In this
16 case the only change on the sheet is here on column B-16,
17 the one that has a box around it. That is the price that
18 was on the first sheet, \$206 and on this sheet it has been
19 increased or doubled to 412. Everything else is the same.

20 If you look here in the middle of the sheet, the zero
21 year price has dropped \$30 to \$261. The expected value of
22 IID water has dropped from \$342 down to \$172. And what this
23 is to show is that this is absolutely not an averaging
24 process. We think of things in terms of averaging. This is
25 not an averaging process. This is a regression analysis

1 program that tries to determine the affect of different
2 conditions on the result. And this does not purport to show
3 that this is what would happen, but that the program is
4 absolutely not an averaging price.

5 If we go to the next sheet, number three, in this case
6 the first two transactions, one and two have been removed
7 and in their place has been substituted two transactions
8 that would represent Colorado River water. You see that the
9 reliability on these is .99 and the TDS is very close to the
10 typical Colorado River water, 650 and 595 respectively.

11 Looking at the average Colorado River zero year price
12 of \$228, and then right next to it the average zero year
13 price of the other eight transactions is almost \$100 higher,
14 \$90 higher. The price, the expected value, rather, of the
15 IID water, however, is \$234, only \$6 higher than the
16 Colorado River price, but \$94 less than the average of the
17 other trades.

18 Now can we go to number four.

19 In this case the only thing that has been changed is
20 the value of the two Colorado River trades was increased by
21 \$100 each. The \$300 was 200. The 250 was 150. Now the
22 average Colorado River zero year price is 354 while the
23 average zero year for the other eight transactions is 313.
24 And you can see that the expected value of IID's water is
25 now listed even higher than the Colorado River price, but

1 very close to that price.

2 Now if we look at the last sheet.

3 In this case the two Colorado River trades have been
4 returned to the former value of 200 and \$150 respectively,
5 but the value of the other eight trades has all been
6 increased by \$100. So that now the average zero year price
7 of the Lower Colorado River water trades is 214. The
8 average zero year price of the other eight trades is 420.
9 The price or the expected value, rather, of the IID water is
10 by this means determined to be \$221, which again is very
11 close to the zero year price of the Colorado River water.

12 These three sheets are designed to show that if there
13 is any Lower Colorado River water in the trades that are
14 analyzed, that they will have an overwhelming influence on
15 setting the value of Colorado River water. And in my
16 written testimony I pointed out that since the Lower
17 Colorado River water users are inclined to have return flow
18 credits and would thereby be likely to conserve their water
19 by cheaper means, or possibly by storage and retrieval, that
20 there is a good chance that this proposal could price our
21 water far below the cost of conserving it by the means that
22 we are proposing to do.

23 CHAIRMAN BAGGETT: Your time has lapsed.

24 MR. GILBERT: I was afraid of that.

25 CHAIRMAN BAGGETT: I will give you a minute or so.

1 MR. GILBERT: The only other thing I have is that I
2 desire to move into evidence all my exhibits, 1 through 13,
3 and will make available copies of the corrections and the
4 spreadsheet copies at the back table after this is over.

5 Thank you very much.

6 CHAIRMAN BAGGETT: Great.

7 Objections.

8 MR. RODEGERDTS: I don't think Mr. Walker and Mr. Cox
9 were sworn in.

10 CHAIRMAN BAGGETT: They were.

11 MR. RODEGERDTS: For their testimony?

12 CHAIRMAN BAGGETT: We took care of that.

13 Objections to move in evidence?

14 MR. SLATER: I would just like to inquire as to some of
15 the foundation for this regression analysis. So I'm
16 objecting pending hearing responses to the foundation for
17 this regression analysis, where it came from, who performed
18 it, when.

19 CHAIRMAN BAGGETT: I understand.

20 MR. GILBERT: Want me to respond to that?

21 CHAIRMAN BAGGETT: Please.

22 MR. GILBERT: The regression analysis program was
23 presented to us as a spreadsheet, Excel spreadsheet program,
24 by Imperial Irrigation District. And I'm certainly not an
25 expert in it. I have learned my way around some parts of

1 it. And we asked for trades that, while not real trades,
2 were plausible trades, and used them in these examples that
3 I have presented.

4 CHAIRMAN BAGGETT: It was prepared by Imperial
5 Irrigation District staff?

6 MR. GILBERT: Yes.

7 MR. OSIAS: That's not right. The formula and the
8 software was prepared by Imperial. He input the data.

9 MR. GILBERT: Yes, that is correct.

10 CHAIRMAN BAGGETT: Mr. Slater.

11 MR. SLATER: We will waive.

12 CHAIRMAN BAGGETT: Thank you.

13 With that, come back 2:00.

14 (Luncheon break taken.)

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AFTERNOON SESSION

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CHAIRMAN BAGGETT: It is all yours.

MR. OSIAS: Thank you.

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CROSS-EXAMINATION OF LARRY GILBERT PANEL

BY IMPERIAL IRRIGATION DISTRICT

BY MR. OSIAS

MR. OSIAS: Gentlemen, let me start, if I might, with Mr. Cox.

Could you describe how you determined how much water to order?

MR. M. COX: Well, I have been a farmer for 30 years, so a part of it is based upon my previous irrigation experience with that crop and those particular fields. I also use panographic information which is provided by the weather service, plant evaporation and I'll check the soil with my shovel.

MR. OSIAS: Then you submit your order to the District?

MR. M. COX: Right.

MR. OSIAS: If things work right, you can expect the water how far in the future from your order?

MR. M. COX: Generally the next day, especially since they put the Willey Reservoir as part of the MWD, pumps water back up into the real time.

1 MR. OSIAS: And the water is delivered to your
2 headgate?

3 MR. M. COX: Yes.

4 MR. OSIAS: You take responsibility from there?

5 MR. M. COX: That's correct.

6 MR. OSIAS: The water leaves your field through sort of
7 three methods; isn't that right, evaporation --

8 MR. M. COX: Right. Evapotranspiration, down through
9 the -- percolation through the soil, or runoff at the end of
10 the field. Evaporation means also the crop transpiration.

11 MR. OSIAS: Right. I was going to say both evaporation
12 and evapotranspiration.

13 MR. M. COX: Direct evaporation from the soil and also
14 what the crop is transpiring.

15 MR. OSIAS: I assume in determining how much water you
16 need you make your decision without any regard to how much
17 water the Salton Sea needs?

18 MR. M. COX: That's correct.

19 MR. OSIAS: You never ordered water in order to run it
20 off your field for the Salton Sea?

21 MR. M. COX: No. The only reason we try to run the
22 water off the end of the field to make sure that the lower
23 end of the field has adequate water for the crops.

24 MR. OSIAS: If you didn't order water, then your farm
25 would have no source of water for the Salton Sea, right?

1 MR. M. COX: That's correct.

2 MR. OSIAS: You have no obligation to order any water,
3 do you?

4 MR. M. COX: No.

5 MR. OSIAS: If you were in one of those periods where
6 for productive reasons you let your land lie idle, I think
7 was the word somebody else used, or fallow, but if it was
8 for productivity reasons, during that period no water would
9 leave your field, right?

10 MR. M. COX: That's correct, unless I was doing some
11 leaching. The regulations don't allow you to have surface
12 runoff without incurring a penalty.

13 MR. OSIAS: Mr. Gilbert, when I am asking Mr. Cox a
14 question, could you turn that exhibit around behind you.
15 You have seen it because you have been here but the other
16 gentlemen haven't. This is IID Exhibit 11.

17 MR. M. COX: The exception of that would be if they
18 have a heavy rainfall, the runoff would come off the field.

19 MR. OSIAS: Mr. Cox, this has been used in hearing days
20 when you weren't here, but this is a history of IID water
21 use from 1914 through the year 2000.

22 You can see the variability, correct?

23 MR. M. COX: Yes, I can.

24 MR. OSIAS: You're probably personally familiar with
25 the 1992 farming year, you were farming then, right?

1 MR. M. COX: Yes, since '73 I've been farming.

2 MR. OSIAS: You have personal experience with the
3 variability since '73?

4 MR. M. COX: Yes, I do.

5 MR. OSIAS: In fact, if your spot 1973 on that chart,
6 it is very close to a peak; isn't that right?

7 MR. M. COX: Yes. Appears '73 is a high use time.

8 MR. OSIAS: Crop markets were good back then?

9 MR. M. COX: Yes, they were. I wish I had some of
10 those now.

11 MR. OSIAS: So your water use may have been more
12 intensive at that time?

13 MR. M. COX: I think so. There was more double
14 cropping, carrying some of the crops, just really trying to
15 finish them out, putting extra water on because the wheat
16 price in particular and sugar price at that time were high,
17 as was the cotton.

18 MR. OSIAS: IN 1992 you are familiar with the white
19 fly infestation that hit the Valley?

20 MR. M. COX: Yes, I personally experienced that.

21 MR. OSIAS: You see the water use react to that?

22 MR. M. COX: Yes.

23 MR. OSIAS: That volatility did not -- at least you did
24 not receive any response from anyone on behalf of the
25 Salton Sea with respect to continuing your flows; is that

1 right?

2 MR. M. COX: Not that I am aware of.

3 MR. OSIAS: You have grown a variety of crops in the
4 past, correct?

5 MR. M. COX: I listed crops on my biography, about 15
6 different crops. I don't think it got submitted. I have
7 copies. About 15 different crops over the last 30 years.

8 MR. OSIAS: Different crops are grown in different
9 seasons.

10 MR. M. COX: Yes.

11 MR. OSIAS: They use different amounts of water; isn't
12 that right?

13 MR. M. COX: Yes, they do.

14 MR. OSIAS: The tailwater that you have experience with
15 in farming different crops varies also, correct?

16 MR. M. COX: Not only that, but alfalfa can be grown on
17 flat or on beds, and that is on beds tend to use more water
18 than on flat.

19 MR. OSIAS: For those of us who associate beds with
20 furniture, what is the difference between flat and beds?

21 MR. M. COX: You make furrows and the elevated part
22 between the furrows you shape into a planting surface.

23 MR. OSIAS: That is a bed?

24 MR. M. COX: That's a bed.

25 CHAIRMAN BAGGETT: Flat is just uniform level?

1 MR. M. COX: Flat is maybe the width of this room, and
2 it has borders on the side of it to control the water which
3 is flooded across the surface.

4 MR. OSIAS: Who decides whether you irrigate by beds or
5 flat?

6 MR. M. COX: That is a decision that the farmer or I
7 make based upon conditions, the type of crop I am willing to
8 plant.

9 MR. OSIAS: Water needs vary by crop, correct?

10 MR. M. COX: Yes, they do, by crop.

11 MR. OSIAS: And by irrigation method?

12 MR. M. COX: Yes.

13 MR. OSIAS: And by salinity of the water?

14 MR. M. COX: I've never studied that. I would assume
15 that from my personal experience, yes.

16 MR. OSIAS: I assume sometimes you monitor your field
17 to determine whether you are seeing any effects of salinity;
18 is that right?

19 MR. M. COX: Yes, I do.

20 MR. OSIAS: You can see that sometimes in the leaf?

21 MR. M. COX: Yes. You asked me if the water use varies
22 by salinity. I was thinking salinity of the water.

23 MR. OSIAS: If you see that there is too much salt in
24 the field, would you apply more water to leach it out?

25 MR. M. COX: Yes.

1 MR. OSIAS: You would adjust your water use depending
2 at least on observed salinity impacts?

3 MR. M. COX: Yes, I would.

4 MR. OSIAS: You are familiar with the fact that
5 salinity in the Colorado River itself varies?

6 MR. M. COX: Yes, I am.

7 MR. OSIAS: Water use also varies with the kind of
8 soil, right?

9 MR. M. COX: Yes, certainly.

10 MR. OSIAS: And in the Valley there are medium and
11 heavy soils, correct?

12 MR. M. COX: Yes, and very light soils also.

13 MR. OSIAS: And some very light soils?

14 MR. M. COX: Wide range of soils in Imperial Valley.

15 MR. OSIAS: We saw an exhibit when you weren't here,
16 so I'll give you an oral summary, that showed that the area
17 of very light soils was a substantial minority of the
18 acreage in the Valley.

19 Is that consistent with your experience?

20 MR. M. COX: Probably. I would expect a fringe around
21 the edges. We're in a lake basin and wind deposits -- the
22 sandier soil is around the edges of the lake basin.

23 MR. OSIAS: The medium to heavier soils are toward to
24 the middle?

25 MR. M. COX: Yes.

1 MR. OSIAS: Sandy soils use more water because there is
2 more percolation?

3 MR. M. COX: That's true.

4 MR. OSIAS: Similarly, the same factors influence how
5 much tailwater there is; isn't that correct?

6 MR. M. COX: Yes.

7 MR. OSIAS: You expect these variabilities for both
8 crop use and tailwater to continue into the future? Do you
9 not?

10 MR. M. COX: I do. Allowing for some modifications if
11 alternate irrigation methods are substituted.

12 MR. OSIAS: Also, there could be future decisions about
13 crops that haven't historically grown, but may be in the
14 future?

15 MR. M. COX: Very well could be.

16 MR. OSIAS: Therefore, a conservation plan needs to
17 preserve much for the farmer the right to make choices, does
18 it not?

19 MR. M. COX: Yes.

20 MR. OSIAS: He should be able to adapt his irrigation
21 conservation activity to the variabilities that we just
22 discussed: crop, salinity, soil, et cetera, right?

23 MR. M. COX: For it to be effective for me, yes, I need
24 that.

25 MR. OSIAS: So, a farm plan that dictates a specific

1 conservation method for a long period of time would not
2 provide that kind of flexibility that is needed; is that
3 correct?

4 MR. M. COX: That's correct.

5 MR. OSIAS: I think you testified you're both a
6 landowner, or you have an interest in a landowner, and a
7 tenant as well?

8 MR. M. COX: That's right.

9 MR. OSIAS: Is it fair to say that the price of land in
10 the Imperial Valley is somewhere between 2,000 and \$4,000 an
11 acre?

12 MR. M. COX: The lower end is probably a little lower
13 than that. Land prices have been a little depressed the
14 last couple of years because of some commodity prices.
15 Maybe some land that is less than 2,000 an acre.

16 MR. OSIAS: You are familiar at least in the last five
17 years of land selling for more than 4,000?

18 MR. M. COX: Yes, I am.

19 MR. OSIAS: Would a good middle number be for the
20 average farm 3,000 an acre?

21 MR. M. COX: That is probably a little high for the
22 average. I think the average is closer between 2,000 and
23 2,500.

24 MR. OSIAS: Can a farmer reduce -- Strike that.

25 Can a farmer conserve water without fallowing and

1 without reducing consumptive use by the plant and not affect
2 the volume of tailwater?

3 MR. M. COX: I don't believe so.

4 MR. OSIAS: I assume maybe we should carve out the
5 really sandy soil where potentially you could save some deep
6 perc. That's possible?

7 MR. M. COX: Really wouldn't be reducing tailwater.

8 MR. OSIAS: You're right, that wouldn't be tailwater.
9 So in sandy soil tailwater might not be effective; you can
10 capture the deep perc?

11 MR. M. COX: You can lose a lot of water in deep perc
12 and not have any tailwater.

13 MR. OSIAS: The bulk of the soils, if you are
14 conserving water and not reducing use, you will see the
15 effect on tailwater?

16 MR. M. COX: That's correct.

17 MR. OSIAS: I suppose you could also probably see a
18 temporary effect by a crop change; is that right?

19 MR. M. COX: Yes.

20 MR. OSIAS: If you went from, correct me if I have this
21 backwards. I should know by now. If you went from alfalfa
22 to wheat, you might use less water?

23 MR. M. COX: Definitely.

24 MR. OSIAS: But that would be for as long as you were
25 in wheat?

1 MR. M. COX: That's right.

2 MR. OSIAS: When you rotate out, your use would go back
3 up?

4 MR. M. COX: Yes.

5 MR. OSIAS: In your experience rotating crops through
6 alfalfa and other crops is important to preserving the
7 productivity of the land?

8 MR. M. COX: Productivity of the land, utilizing my
9 equipment. My labor force, the timing of when one crop is
10 harvested and also disease control, weed control.

11 MR. OSIAS: Tell me how crop rotation helps that?

12 MR. M. COX: If I were to put a wheat crop followed by
13 another grass crop followed by an onion crop, grassy-type
14 weeds are more difficult to control in those grassy-type
15 crops. So if I rotate with a broad leaf, like cotton or
16 sugar beet, they're herbicides which won't hurt the broad
17 leaf but will knock out the grass weeds.

18 Same thing with certain diseases would build up if I
19 continued to like, say, a root crop is real susceptible to
20 phytophthora, pathogens.

21 MR. OSIAS: There are important reasons to preserve
22 crop selection discretion in the farmer?

23 MR. M. COX: Very important.

24 MR. OSIAS: If you were going to improve the efficiency
25 of the farmer, I assume you have costs associated at least

1 potentially with capital expenditures?

2 MR. M. COX: Capital, labor, equipment.

3 MR. OSIAS: Operation?

4 MR. M. COX: Yep.

5 MR. OSIAS: Maintenance?

6 MR. M. COX: Uh-huh.

7 MR. OSIAS: Additional management, perhaps?

8 MR. M. COX: Yes.

9 MR. OSIAS: Would you also have potentially some --

10 MR. M. COX: You have some land loss issues that take
11 up land for the pump back or filter station or whatever you
12 have.

13 MR. OSIAS: Would the risk change in terms of your
14 farming operation if you are doing something new with
15 conservation?

16 MR. M. COX: Certainly.

17 MR. OSIAS: Some reserve to deal with unexpected
18 consequences would be appropriate?

19 MR. M. COX: Yes. We are trying to find any kind of
20 reserves.

21 MR. OSIAS: I assume if you had more risk, some
22 incentive would be necessary in order to get you to become
23 more efficient?

24 MR. M. COX: If I don't have to assume the risk, yes, I
25 need some sort of incentive to help persuade me.

1 MR. OSIAS: If you were to permanently retire some
2 farmland in order to generate water, wouldn't you have costs
3 associated, stranded costs, associated with some of the land
4 acquisition?

5 MR. M. COX: Yes.

6 MR. OSIAS: Suppose on the land that was fallowed you
7 would lose the income, right?

8 MR. M. COX: Yes.

9 MR. OSIAS: And you might have some diseconomies of
10 scale?

11 MR. M. COX: Might.

12 MR. OSIAS: Is that merely hypothetical or are there
13 benefits to larger farm parcels versus smaller?

14 MR. M. COX: There are definite advantages. If I have
15 to spray a field, sometimes there is a minimum charge. If I
16 have less than that threshold number of acres, they are
17 going to charge me more per acre on what they actually
18 spray. If I have ten acres of a 30-acre field sitting idle,
19 that increases the cost because I have a minimum charge, not
20 just a per acre charge.

21 MR. OSIAS: If you had one irrigator or irrigation
22 management person and you still needed him for the 20 acres
23 less, you don't get to use him two-thirds of the time if you
24 fallow a third of your field; is that right?

25 MR. M. COX: That's right. I still have a grader and a

1 backhoe and a pickup. You are going to spread those costs
2 over less productive acres.

3 MR. OSIAS: The land not fallowed has a higher cost?

4 MR. M. COX: Cost per acre.

5 MR. OSIAS: I presume for the land that is fallowed,
6 you need to control dust?

7 MR. M. COX: At this point we are not mandated to
8 control dust. We would -- I imagine we would want to
9 control the weeds.

10 MR. OSIAS: Why would you want to control the weeds?

11 MR. M. COX: Well, they cannot only become a problem if
12 -- well, you're talking permanently. They can be spread.
13 Weeds can be spread by birds or the wind.

14 MR. OSIAS: So if they are sitting next to the land you
15 are producing, that is not a good thing?

16 MR. M. COX: They could also harbor diseases and
17 insects.

18 MR. OSIAS: You would have some field management
19 expenses even on the fallowed fields.

20 MR. M. COX: Yes. There is ground in the Valley that
21 is designated as highly erodible land. They do require you
22 on that ground to do something to control the wind erosion.

23 MR. OSIAS: And if we change that hypothetical just
24 slightly so the fallowing wasn't permanent, but it was in
25 say ten-year blocks, I assume there would be expenses you

1 would have to incur to preserve the ability to put that land
2 back into production?

3 MR. M. COX: Definitely.

4 MR. OSIAS: I think we heard something about the
5 salting up from capillary action. You were here for that
6 testimony.

7 MR. M. COX: Yes, I was.

8 MR. OSIAS: You agree with that?

9 MR. M. COX: Yes.

10 MR. OSIAS: Has anyone ever offered to pay you for
11 preserving or increasing your tailwater quantity?

12 MR. M. COX: No.

13 MR. OSIAS: You're familiar -- I think you testified
14 with the fact that there are dikes surrounding the Sea?

15 MR. M. COX: Yes, I am.

16 MR. OSIAS: You farm near some; is that what you said?

17 MR. M. COX: Yes. I farm just about a half mile from
18 where the dikes actually border on the neighbor's field, and
19 I did farm a field that the dike was actually to keep the
20 drain water -- they had to raise the dikes so the drain
21 would make it to the Sea without flooding the field even
22 though that field was a mile from the Salton Sea.

23 MR. OSIAS: The purpose of these dikes is to keep
24 saline water from invading productive lands?

25 MR. M. COX: Correct.

1 MR. OSIAS: Given the discussions we had both today and
2 in earlier days, saline water is bad for crop production?

3 MR. M. COX: Yes, very bad.

4 MR. OSIAS: The dikes are made out of what?

5 MR. M. COX: Mostly it is fairly heavy clay soil that
6 is brought in, but they put some sort of riprap on the water
7 side, concrete or rock.

8 MR. OSIAS: They're trapezoidal-shaped, wider at the
9 base?

10 MR. M. COX: That is a fair depiction, yes. You need a
11 wide, and they try to keep the top wide enough for the
12 maintenance equipment to work on.

13 MR. OSIAS: The District now pays to maintain the
14 dikes, as far as you know?

15 MR. M. COX: That is my belief.

16 MR. OSIAS: They don't make any money on those dikes,
17 do they?

18 MR. M. COX: I believe they charge the water users.
19 That goes under the cost of our water operations.

20 MR. OSIAS: The elevation of the land on the side of
21 the dike away from the Sea is substantially lower than the
22 Sea elevation; is that correct?

23 MR. M. COX: Yes. In some cases they've actually taken
24 dirt, excavated dirt, to help build a dike there. So
25 they've had to lower the field since it is cheaper to use

1 dirt in a near location, so they actually lowered the level
2 of the field to provide enough dirt to fill the dike.

3 MR. OSIAS: Are those called borrow pits?

4 MR. M. COX: Yes. Sometimes actually the field is
5 releveled and so they are trying to farm.

6 MR. OSIAS: Have you observed how close to the top of
7 the dikes the Sea currently is?

8 MR. M. COX: Yes. I have to drive out and check a lift
9 pump, so several times a week I observe the level of the Sea
10 in relation to the top of the dike. Just about three weeks
11 ago we had a big windstorm and you actually could see the
12 waves crashing on the rocks and the spray going over the top
13 of the dikes.

14 MR. OSIAS: Is there salt in the spray?

15 MR. M. COX: Yes.

16 MR. OSIAS: Does that spray get irrigated agriculture?

17 MR. M. COX: This was going out over the alfalfa.

18 MR. OSIAS: Is that helpful to the alfalfa?

19 MR. M. COX: No, it burns.

20 MR. OSIAS: It is not like potato chips where the salt
21 enhances the flavor?

22 MR. M. COX: I didn't try eating it.

23 MR. OSIAS: So there is actual economic damage
24 currently being caused by the high Sea?

25 MR. M. COX: Yes.

1 MR. OSIAS: And there is drainage difficulties that I
2 think you explained before, correct?

3 MR. M. COX: Yes. Well, the cost of maintaining the
4 pumps and the power to run them and maintaining the dikes.

5 MR. OSIAS: If the dike breaches, would it be fairly
6 devastating to the fields that it protects?

7 MR. M. COX: It would be disastrous.

8 MR. OSIAS: To reclaim that farmland would be difficult?

9 MR. M. COX: Very difficult. I don't know if it -- I
10 guess it would be possible, but you are looking at a
11 long-term project. This water is 25 percent saltier than
12 ocean water.

13 MR. OSIAS: So serious problems to any farmland it
14 hits?

15 MR. M. COX: Yes. I understand a lot of it would
16 inundate -- one break would inundate hundreds of acres at a
17 time, maybe thousands.

18 MR. OSIAS: Have you observed that there are geothermal
19 plants located behind these dikes?

20 MR. M. COX: Yes.

21 MR. OSIAS: Are they, therefore, in the path of
22 flooding if the dike breaks?

23 MR. M. COX: Yes.

24 MR. OSIAS: At least as a farmer, do you think there
25 would be benefit to the District of a lowered Sea?

1 MR. M. COX: Yes, I do.

2 MR. OSIAS: Mr. Gilbert, I put in front of you a copy
3 of the Imperial/San Diego contract.

4 Do you see that?

5 MR. GILBERT: Yes, I do.

6 MR. OSIAS: Your Exhibit 11, which has three textual
7 pages and some spreadsheets, is not part of that contract,
8 correct?

9 MR. GILBERT: That's correct.

10 MR. OSIAS: There is a very lengthy exhibit which
11 explains how to calculate the price, goes through examples,
12 and the examples you used are not part of that San Diego/IID
13 contract exhibit?

14 MR. GILBERT: That's correct.

15 MR. OSIAS: The three pages of text are your paraphrase
16 of the contract?

17 MR. GILBERT: Pointing out the main points that I was
18 trying to show from the calculation procedures.

19 MR. OSIAS: Now, it's true, is it not, that the
20 contract price is of concern to the farmers because the
21 farmers want to know how much money IID is going to get,
22 correct?

23 MR. GILBERT: That would be one reason.

24 MR. OSIAS: Second, they want to know how much money
25 they are going to get, correct?

1 MR. GILBERT: Yes. And if we have committed through
2 the District to conserve the water by the means described,
3 improving our efficiency, then we need to be sure that we
4 don't put ourselves at risk to do a job that we don't have
5 enough money to pay for.

6 MR. OSIAS: You were here when Dr. Smith testified
7 about financial tools that could be used to assure the
8 farmer a level payment plus CPI. You heard that testimony?

9 MR. GILBERT: I don't recall the level payment plus
10 CPI. I remember most of his testimony, but I don't recall
11 that.

12 MR. OSIAS: Isn't it true that the contract with San
13 Diego does not require Imperial Irrigation District to pay
14 the farmer on the same formula that San Diego pays Imperial?

15 MR. GILBERT: My understanding was that San Diego paid
16 Imperial, and Imperial has to work out their own deal with
17 the farmers.

18 MR. OSIAS: So San Diego could pay Imperial on this
19 formula that you paraphrased, but Imperial might use a
20 different formula to pay the farmers?

21 MR. GILBERT: That is possible.

22 MR. OSIAS: And it is possible that that formula that
23 Imperial uses could be on a sum certain plus CPI?

24 MR. GILBERT: Anything that would be acceptable to both
25 parties would work.

1 MR. OSIAS: It sounds like that would be preferable to
2 you, at least from a complexity perspective?

3 MR. GILBERT: I would have to study that to determine
4 that.

5 MR. OSIAS: You are not indifferent to how much San
6 Diego pays because you want to make sure Imperial gets
7 enough money to cover its costs, right?

8 MR. GILBERT: Yes.

9 MR. OSIAS: As far as you know, the Imperial Irrigation
10 District Board has studied the subject of price extensively?

11 MR. GILBERT: I hope so, but I don't know that I am
12 aware of what all is spent.

13 MR. OSIAS: You don't know how much they have studied
14 it?

15 MR. GILBERT: No, I don't.

16 MR. OSIAS: But you do know they signed a contract with
17 that clause in it?

18 MR. GILBERT: Yes.

19 MR. OSIAS: You do know that they have hired a variety
20 of consultants and experts to advise them on that subject?

21 MR. GILBERT: That is my understanding, and I did
22 disagree with some of their conclusions.

23 MR. OSIAS: You haven't been privy to their closed
24 session analysis about what they expect this formula to
25 produce, have you?

1 MR. GILBERT: If there has been some analysis in closed
2 session, no, I have been privy to very little of that.

3 MR. OSIAS: So your opinion is without benefit of the
4 analysis that the Board has had done for them, correct?

5 MR. GILBERT: Well, early on, back in 1988, I believe,
6 we did pursue questions about this to considerable length,
7 and we did get considerable number of explanations about it,
8 and did do our own work, I and a few others, to try to
9 analyze what was happening. And some of our questions did
10 not seem to be answered to our satisfaction, and some of our
11 contentions appeared not to be responded to favorably.

12 MR. OSIAS: You're dissatisfied in your own mind, but
13 you don't know that the Board is dissatisfied, correct?

14 MR. GILBERT: That's correct.

15 MR. OSIAS: The price is relevant, again, for two
16 reasons, right? One is make sure that IID gets enough money
17 to do what it is going to be doing. Second, based on
18 whatever method it chooses, that the farmer gets enough
19 money to cover his costs, correct?

20 MR. GILBERT: That is correct, and I think that to be
21 sure that we do what we need to do so the community doesn't
22 suffer and the economy, local economy, as well.

23 MR. OSIAS: You are familiar, I believe, with at least
24 the EIR/EIS and some earlier work done that if efficiency
25 conservation is put in, that that is a positive stimulus to

1 the economy.

2 Are you familiar with those studies?

3 MR. GILBERT: Yes. They showed that the expenditure
4 would generate, what I would call, a new conservation
5 industry in the community and that would benefit the local
6 economy.

7 MR. OSIAS: Create jobs and create purchase and sales
8 of goods or equipment?

9 MR. GILBERT: Sure.

10 MR. OSIAS: Now, your three-page paraphrase talks about
11 the price being able to change in ten years, right?

12 MR. GILBERT: Yes.

13 MR. OSIAS: It's correct, isn't it, that it is
14 prohibitive from changing sooner than ten years?

15 MR. GILBERT: That's correct. It can change any time
16 after ten years is my understanding.

17 MR. OSIAS: Is it true that it can change anytime after
18 ten years or are there certain conditions to a change?

19 MR. GILBERT: As I pointed out in my testimony, there
20 are certain conditions that have to be met in addition to
21 the ten-year time.

22 MR. OSIAS: Those conditions involve at least,
23 conceptually, two. That is there have to be what we would
24 call in the real estate industry comparable sales that you
25 can use to determine a market price, correct, that is one of

1 the conditions?

2 MR. GILBERT: That is my understanding.

3 MR. OSIAS: Second, there has to be substantial volume
4 of water being marketed in California, correct?

5 MR. GILBERT: I am not sure how substantial, but there
6 does need to be a significant amount.

7 MR. OSIAS: Let's look at those two conditions for just
8 one minute. If you will turn to Page 34 of the contractual
9 -- let me back up a minute. You didn't testify to this,
10 but I know you are aware of it.

11 Before any price change under any of those clauses that
12 you are worried about, the price is set as a percentage of
13 the Metropolitan price, correct?

14 MR. GILBERT: Yes.

15 MR. OSIAS: That percentage starts at that time 75
16 percent and increases to 95 percent, correct?

17 MR. GILBERT: That is my recollection.

18 MR. OSIAS: You are not worried about that, are you?

19 MR. GILBERT: No.

20 MR. OSIAS: You don't expect the Metropolitan price to
21 go down?

22 MR. GILBERT: Not substantially.

23 MR. OSIAS: You are aware that Metropolitan is actually
24 in the marketplace trying to buy water, right?

25 MR. GILBERT: Yes.

1 MR. OSIAS: If they are buying water for cheaper than
2 they are currently obtaining it, you would expect their
3 price to go down?

4 MR. GILBERT: It is a possibility. I'm sure their
5 costs are -- includes debt service as well as operation and
6 maintenance and any cost of procurement would be included in
7 that.

8 MR. OSIAS: Do you know if their marginal cost for
9 their supplies is higher or lower than their average current
10 cost?

11 MR. GILBERT: I have no knowledge of that.

12 MR. OSIAS: Would you be surprised to learn that it is
13 higher?

14 MR. GILBERT: Probably not.

15 MR. OSIAS: Water is more scarce today than it was 40
16 years ago?

17 MR. GILBERT: I think probably. I really can't testify
18 to that.

19 MR. OSIAS: So in the event that this price might
20 change away from the Metropolitan price, we have the
21 conditions on Page 34, correct?

22 MR. GILBERT: Yes.

23 MR. OSIAS: Those conditions include that one of the
24 parties has to ask for it, correct? And at least ten years
25 has gone under the contract?

1 MR. GILBERT: Right.

2 MR. OSIAS: That is the condition you pointed out,
3 right?

4 MR. GILBERT: Yes.

5 MR. OSIAS: Then there has to be the existence of
6 minimum qualifying transaction threshold.

7 See that?

8 MR. GILBERT: Yes.

9 MR. OSIAS: On Page 26 do you see that little chart
10 called California Water Market Scale?

11 MR. GILBERT: Yes, I do.

12 MR. OSIAS: For the price to change -- not the price,
13 for half the price to go into this formula, so not all but
14 just half to go into the formula, there has to be between
15 240,000 and 350,000 acre-feet per year of qualifying market
16 transactions?

17 MR. GILBERT: So, it is more than the 240,000 acre-feet
18 or these qualifying transactions, then that determination
19 would affect the price to the 50 percent rate.

20 MR. OSIAS: So half the price will still be on Met and
21 the other half would be influenced by this formula, right?

22 MR. GILBERT: Yes.

23 MR. OSIAS: When it says qualifying transactions, those
24 are only certain kinds of water marketing transactions,
25 right?

1 MR. GILBERT: That's my understanding.

2 MR. OSIAS: You read this and looked at those factors?

3 MR. GILBERT: I looked at it pretty carefully about
4 four years ago. I have not studied it as careful since.

5 MR. OSIAS: Back on Page 34, not only do we have this
6 volume requirement of at least 240,000 acre-feet a year of
7 transactions, but you have to have at least ten eligible
8 transactions, correct?

9 MR. GILBERT: That's correct.

10 MR. OSIAS: They can't be more than ten years old?

11 MR. GILBERT: Except under certain circumstances, but
12 primarily, yes.

13 MR. OSIAS: An eligible transaction is defined back on
14 Page 26. And do you see that an eligible transaction
15 requires the information to be available to the parties?

16 MR. GILBERT: Correct.

17 MR. OSIAS: It has to be a voluntary transaction,
18 correct?

19 MR. GILBERT: Yes.

20 MR. OSIAS: Can't be under the threat of taking or any
21 such thing?

22 MR. GILBERT: I am not qualified to determine what the
23 legal meaning is of voluntary, I don't think. It would need
24 to be voluntary in some sense.

25 MR. OSIAS: How long does the transaction have to be?

1 You can see that on Page 27. Five years minimum?

2 MR. GILBERT: Yes.

3 MR. OSIAS: One-year transactions don't count, right?

4 MR. GILBERT: That's correct.

5 MR. OSIAS: Do they have to be a minimum size?

6 MR. GILBERT: Yes.

7 MR. OSIAS: They can't be less than 5,000 acre-feet a
8 year, correct?

9 MR. GILBERT: Yes, that is correct.

10 MR. OSIAS: They have to be at least 50,000 acre-feet
11 total?

12 MR. GILBERT: That's correct.

13 MR. OSIAS: So we are talking fairly large transactions
14 here, correct?

15 MR. GILBERT: When we're looking at 2- or 300,000
16 acre-feet, that seems like fairly small, but --

17 MR. OSIAS: Compared to the IID, of course, every
18 transaction has been small.

19 MR. GILBERT: You're probably right.

20 MR. OSIAS: If we were looking at an individual farmer
21 drought water bank transaction, they are not nearly as big,
22 correct?

23 MR. GILBERT: Right.

24 MR. OSIAS: They require delivery in at least 75
25 percent of the years, right?

1 MR. GILBERT: Yes.

2 MR. OSIAS: So it is not a drought only transaction,
3 right, because we don't have droughts 75 percent of the
4 years?

5 MR. GILBERT: Think that would be a fair assessment.

6 MR. OSIAS: Now you haven't submitted any evidence on
7 the probability of getting to this price redetermination in
8 ten years, have you?

9 MR. GILBERT: No, I haven't. That is beyond my
10 expertise.

11 MR. OSIAS: It is also beyond your expertise to know
12 whether one could occur in 20 years?

13 MR. GILBERT: Yes.

14 MR. OSIAS: In fact, it may not occur for the entire
15 life of this contract; is that right?

16 MR. GILBERT: That's correct. But judging from the
17 possibility of transfers, I concluded that there is
18 definitely a strong likelihood that it could take place.

19 MR. OSIAS: And that likelihood was based on your
20 expertise?

21 MR. GILBERT: Information available to us at the time
22 the contract or agreement was presented. It indicated that
23 this could very well happen, that the water market in
24 California is a developing thing and there was a good chance
25 that it would take place and it would affect the contract

1 price.

2 MR. OSIAS: Do you know if 240,000 acre-feet per year
3 of water marketing transactions, each with a 75 percent of
4 its term delivery years, with a minimum of 50,000 acre-feet
5 in the aggregate, are we anywhere close to 240,000 acre-feet
6 a year?

7 MR. GILBERT: The main transfer I am familiar with is
8 the one that is in process with Metropolitan and Palo Verde,
9 and I think it may account for close to a hundred thousand
10 feet. Several others are being talked about, and I don't
11 know whether they would be qualifying or not.

12 MS. OSIAS: Does PVID require delivery every year?

13 MR. GILBERT: My understanding was yes.

14 MR. OSIAS: Turn to -- perhaps put the spreadsheets
15 back up.

16 Now, Mr. Gilbert, you put this up to illustrate your
17 concern that the price might go down, correct?

18 MR. GILBERT: Both that they can have unpredictability
19 and possibility of going down, yes.

20 MR. OSIAS: The real estate market for land in Imperial
21 is set by market factors, correct?

22 MR. GILBERT: Yes.

23 MR. OSIAS: And it fluctuates from year to year?

24 MR. GILBERT: Yes.

25 MR. OSIAS: In that sense it is a little unpredictable

1 whether your land will be worth 2,500 maybe today and maybe
2 3,000 three years ago, right?

3 MR. GILBERT: There are some general trends, and over
4 the long haul it tends to follow the trends. But there are
5 ups and downs in the cycle.

6 MR. OSIAS: Once people are used to the marketplace,
7 even though there is no guarantee on the value of land, they
8 can pretty much bracket what land is going to be worth given
9 its historical fluctuation, correct?

10 MR. GILBERT: Well, a lot of mistakes have been made in
11 that regard, but over the long, long term usually you come
12 out okay.

13 MR. OSIAS: In any market transaction mistakes can be
14 made by one side or the other, correct?

15 MR. GILBERT: Yes.

16 MR. OSIAS: Including farmers who sell products?

17 MR. GILBERT: Yes.

18 MR. OSIAS: And sometimes they put them out under a
19 contract and, lo and behold, it cost more than they are
20 getting, right?

21 MR. GILBERT: They are not very eager to put them out
22 on consignment and just put them on the truck and say, "Pay
23 me what you get and what it is worth when it gets there."

24 MR. OSIAS: The land in Imperial, the land, has things
25 that affect its values like, for example, whether a freeway

1 goes through it, correct?

2 MR. GILBERT: Yes.

3 MR. OSIAS: And its size, correct?

4 MR. GILBERT: Yes.

5 MR. OSIAS: And its soil type?

6 MR. GILBERT: Right.

7 MR. OSIAS: And what buyers try to do is figure out how

8 those factors aggregate into what it is worth, correct?

9 MR. GILBERT: Yes.

10 MR. OSIAS: And sellers try to take advantage of the

11 good features and sort of talk down the not so attractive

12 features, right? That is how markets work?

13 MR. GILBERT: Yes.

14 MR. OSIAS: The formula here, you are correct, does not

15 produce an average; isn't that correct?

16 MR. GILBERT: That's correct.

17 MR. OSIAS: In fact, what it tries to do is to say from

18 a statistical analysis basis, having a minimum sample size,

19 which we know will exist, because you can't use the formula

20 without the minimum sample, right?

21 MR. GILBERT: Correct.

22 MR. OSIAS: It tries to say are the factors that -- are

23 there factors that influence price or are they irrelevant to

24 price, correct?

25 MR. GILBERT: More random, right.

1 MR. OSIAS: That is the purpose of this formula, not an
2 average?

3 MR. GILBERT: It uses that determination to decide what
4 the price of IID water would be set at.

5 MR. OSIAS: The outcome of the formula can influence
6 the price, correct?

7 MR. GILBERT: Yes.

8 MR. OSIAS: But the regression analysis is to solve for
9 whether a variability is, in fact, valued in the
10 marketplace, correct, or do you not know?

11 MR. GILBERT: I think I would put it a little
12 differently than that. The regression analysis would
13 determine, based on the sample being used, which factors
14 were weighed more heavily and which were weighed less in
15 order to determine an expected price for IID's water.

16 MR. OSIAS: Look to Page 35 of your agreement, would
17 you not, do you see the A, B and C at the top of the page?

18 MR. GILBERT: Yes.

19 MR. OSIAS: Those are three factors that you have put
20 into your little example, right, how old the transaction is?
21 That is A?

22 MR. GILBERT: Correct.

23 MR. OSIAS: That is called the reference date?

24 MR. GILBERT: Yes.

25 MR. OSIAS: Or charge vintage, as if this was a fine

1 wine?

2 MR. GILBERT: Right.

3 MR. OSIAS: Supply and reliability, correct?

4 MR. GILBERT: Yes.

5 MR. OSIAS: And water quality was factor C, right?

6 MR. GILBERT: Yes.

7 MR. OSIAS: You testified that you were concerned that
8 how water was conserved wasn't a factor, right?

9 MR. GILBERT: Not necessarily a factor.

10 MR. OSIAS: But D says other transactions or transfer
11 water characteristics requested by a party, correct?

12 MR. GILBERT: My understanding is it takes --

13 MR. OSIAS: First, that is what it says?

14 MR. GILBERT: That is what it says.

15 MR. OSIAS: Not everybody has their document.

16 MR. GILBERT: And that it takes more than just a
17 request for it to be included.

18 MR. OSIAS: In fact, if you look at the next little
19 paragraph, IV, a statistically valid relationship has to be
20 confirmed, right?

21 MR. GILBERT: That is what it says.

22 MR. OSIAS: So if you how you generated water had a
23 statistically valid relationship to price, it would
24 included, and if it didn't have a statistically valid
25 relationship, it wouldn't be, correct?

1 MR. GILBERT: Assuming there were enough transactions
2 for the formula to work with.

3 MR. OSIAS: If there are not enough transactions, we
4 can't use the formula at all, correct?

5 MR. GILBERT: Yes. But I understand it takes more
6 transactions to add a feature than it would to do just the
7 three that are included.

8 MR. OSIAS: Now, if we look at your example on Page 4,
9 I think that is E-3. Let's try E-3. The data from eligible
10 transactions, this is the sample of ten which is the
11 minimum, right?

12 MR. GILBERT: Yes.

13 MR. OSIAS: And so we have reliability in the third
14 column from the right. You see that down here in the lower
15 left-hand corner.

16 MR. GILBERT: Third down from the left?

17 MR. OSIAS: I'm sorry. Yes, third column from the
18 left. I'm not too good with these, as you can imagine.

19 That is to suggest the percentage of reliability. So
20 99 is like 99 percent reliable?

21 MR. GILBERT: Be very highly reliable.

22 MR. OSIAS: The .6 is 60 percent reliable?

23 MR. GILBERT: That is my understanding, yes.

24 MR. OSIAS: So in 40 percent of the years you couldn't
25 get the water you were bargaining for?

1 MR. GILBERT: I don't know whether that is exactly who
2 how this is determined or not. It is apparently a judgment
3 negotiated number that is arrived at to hopefully analyze
4 the reliability of the water. Whether that means that you
5 could get it 60 percent of the time, I am not sure.

6 MR. OSIAS: Okay.

7 Let's look at E-5. This is one of the ones you used to
8 show what happens to the IID price when you raise
9 nonColorado River transactions.

10 Do you see that?

11 MR. GILBERT: Yes.

12 MR. OSIAS: If we just look at the data -- by the way,
13 you made this data up, correct?

14 MR. GILBERT: No. The data was furnished by IID upon
15 our request that we have some plausible transactions to
16 evaluate.

17 MR. OSIAS: They didn't give you this table of ten, did
18 they?

19 MR. GILBERT: Of ten?

20 MR. OSIAS: You have ten samples here. They did not
21 give you this table of ten?

22 MR. GILBERT: My understanding is, yes. That is my
23 recollection.

24 MR. OSIAS: Did they tell you where these transactions
25 -- these aren't real transactions, are they?

1 MR. GILBERT: Not real transactions. They're
2 fictitious transactions of what could have happened if the
3 water were obtained from the two different sources, State
4 Water Project water and also Lower Colorado River water.

5 MR. OSIAS: Let's compare, for example, this
6 hypothetical transaction two to the hypothetical transaction
7 eight, or seven even better.

8 Do you see two and seven?

9 MR. GILBERT: Yes.

10 MR. OSIAS: We have a difference in TDS of 225 parts
11 per million, correct?

12 MR. GILBERT: Yes.

13 MR. OSIAS: And transaction two is 99 percent reliable
14 and transaction seven is 60 percent reliable?

15 MR. GILBERT: Yes.

16 MR OSIAS: In this hypothetical we find that the
17 marketplace has valued transaction two at half the price of
18 transaction seven, right?

19 MR. GILBERT: A little more than that, but close.

20 MR. OSIAS: Transaction seven is a little more than
21 twice as valuable?

22 MR. GILBERT: No. Looking at the zero year, 370
23 against 198, a little less.

24 MR. OSIAS: I'm sorry. Okay.

25 If that is your data, you have to conclude that the

1 reliability doesn't account for very much, correct?

2 MR. GILBERT: In this case the formula has analyzed the
3 data and said that the prices were not set heavily relying
4 on reliability as a factor.

5 MR. OSIAS: In fact, a difference of 220-something TDS
6 is far more important than 40 percent more reliable?

7 MR. GILBERT: It is a very interested analysis
8 process. And with a group of transactions that are totally
9 separate from the other group, you can find some very
10 independent, interesting results.

11 MR. OSIAS: I know you find it interesting, but my
12 point is this: You wouldn't farm on 60 percent reliable
13 water, would you?

14 MR. GILBERT: I might farm 60 percent of the time.

15 MR. OSIAS: Only if you could predict perfectly when
16 you'd get the water, in which it would be a hundred percent
17 reliable during the period, correct?

18 MR. GILBERT: I'm familiar with people that are in dry
19 land or flooded areas and they may plant when they see
20 clouds and harvest a crop two years out of three or
21 something like that. So I don't think I can agree with your
22 statement.

23 MR. OSIAS: The regression analysis would use this
24 hypothetical data to conclude that the marketplace does not
25 value 99 percent reliability very much compared to TDS,

1 correct?

2 MR. GILBERT: In this set of examples that is a
3 conclusion that it has drawn, yes.

4 MR. OSIAS: This set of examples is not based on any
5 real world set of samples?

6 MR. GILBERT: It is based on fictitious trades that
7 include two trades from what are like Colorado River water
8 and other eight trades are unlike Colorado River water.

9 MR. OSIAS: When you say they are like it is because
10 they have Colorado River TDS?

11 MR. GILBERT: And their reliability.

12 MR. OSIAS: But not price, because these are fictitious
13 trades, correct?

14 MR. GILBERT: They're fictitious trades. And the
15 prices used here are to demonstrate that the process will
16 place the value of IID's water very close to the value of
17 other Colorado River water since the two characteristics are
18 similar.

19 MR. OSIAS: You haven't submitted any evidence to
20 substantiate any of those tables, correct?

21 MR. GILBERT: I am not sure what you're asking for.

22 MR. OSIAS: Actual transactions that would fit the
23 eligibility criteria and produce this kind of pricing with
24 these kind of criteria?

25 MR. GILBERT: No. No real transactions are listed

1 here.

2 MR. OSIAS: Thank you.

3 Mr. Walker, I think some of your testimony dealt with
4 your concern about how a baseline may be unfair, correct?

5 MR. WALKER: That's correct.

6 MR. OSIAS: It is your goal not just for you but for
7 the entire valley a fair baseline be established, correct?

8 MR. WALKER: If a baseline is to be established, I
9 would hope it would be fair, yes.

10 MR. OSIAS: Let's move away from the concept of
11 baseline for one minute.

12 Are you aware that priority three has a maximum amount
13 of water it can use from the Colorado River in a normal year
14 when there is only 4.4?

15 MR. WALKER: Without referring to the chart showing all
16 this, I really can't give you an answer.

17 MR. OSIAS: I'm not asking you for a number. You know
18 that there is an upper limit? Or do you not know that?

19 MR. WALKER: I did not know that.

20 MR. OSIAS: Mr. Cox, do you know that?

21 MR. M. COX: That there was an upper limit to the
22 priority three?

23 MR. OSIAS: Yes.

24 MR. M. COX: I think I heard that at one point, but it
25 is not something I recall readily.

1 MR. OSIAS: Have any of you heard of the four-four
2 limit from the Colorado River?

3 MR. M. COX: Yes.

4 MR. OSIAS: Everyone is nodding, okay.

5 And the ag portion of that, priorities one, two and
6 three is 3.85.

7 Mr. Cox, you are aware of that?

8 MR. M. COX: Yes.

9 MR. OSIAS: Mr. Walker, were you aware of that?

10 MR. WALKER: I am aware of that, yes.

11 MR. OSIAS: Were you aware that what is left for
12 priority three is the amount not used by priorities one and
13 two?

14 MR. M. COX: Yes.

15 MR. OSIAS: I'll stay with Mr. Walker now because I
16 think I have his memory refreshed.

17 MR. WALKER: I understand that is the way the priority
18 system works, yes.

19 MR. OSIAS: If you subtract whatever one and two uses
20 from 3.85, that is the upper limit that is available for
21 priority three?

22 MR. WALKER: Presumably.

23 MR. OSIAS: Were you aware that there is a method in
24 the Irrigation District Act for dealing with excess demand
25 above the amount of water available to the IID? In other

1 words, if you have a shortage, no transfer involved, just a
2 shortage.

3 MR. WALKER: I have heard that there is a way of
4 allocating water due to assessed valuation. Is that what
5 you are referring to?

6 MR. OSIAS: Yes.

7 So, in fact, today if IID bumps into that priority
8 ceiling, water has to be shared among the farmer group,
9 correct?

10 MR. WALKER: Yes. It would appear so, yes.

11 MR. OSIAS: You are right, the existing law is that you
12 would take the assessed value of the different land, not
13 counting the improvements like buildings, and use that as a
14 basis of dividing it up pro rata.

15 You have heard discussion of that in the Valley?

16 MR. WALKER: I have, yes.

17 MR. OSIAS: Could that method be used to divide up
18 water for purposes of conservation participation?

19 MR. WALKER: I don't particularly care for that method.

20 MR. OSIAS: But it could be used?

21 MR. WALKER: I would assume so.

22 MR. OSIAS: You don't like that better or worse than
23 that historical baseline.

24 MR. WALKER: Neither one are particularly attractive to
25 me.

1 MR. OSIAS: It is possible, also, that a baseline based
2 on a different historical period could be used, correct?

3 MR. WALKER: I don't like baselines based on historical
4 periods.

5 MR. OSIAS: At all?

6 MR. WALKER: No.

7 MR. OSIAS: It doesn't matter if it is a 25-year period
8 rather than ten?

9 MR. WALKER: I would prefer to get away from historical
10 baselines.

11 MR. OSIAS: And you're not enamored with using assessed
12 value either?

13 MR. WALKER: No, I am not.

14 MR. OSIAS: Have you heard discussion that that is one
15 of the potentials that's been evaluated?

16 MR. WALKER: I have heard that, yes.

17 MR. OSIAS: You could also let everyone save against
18 the average use. Have you heard that discussed as the
19 baseline?

20 MR. WALKER: I have.

21 MR. OSIAS: Do you like that one better?

22 MR. WALKER: Could you describe that a little more
23 carefully to make sure I'm understanding what you are
24 saying?

25 MR. OSIAS: In other words, to determine how much water

1 you can use and hence what your savings will be measured
2 against, give every acre the same number, just you'll have
3 to calculate it based on the average so that the total --

4 MR. WALKER: I have heard that discussed.

5 MR. OSIAS: Do you like that one any better?

6 MR. WALKER: They all bring out a multitude of
7 problems.

8 MR. OSIAS: No matter which baseline you use, it
9 appears probably some farmer may be better off than some
10 other farmer, right?

11 MR. WALKER: Yes.

12 MR. OSIAS: If IID chooses to live under the 3.1
13 million cap as part of a settlement, say, with Coachella and
14 Metropolitan, but doesn't transfer any water, allocating the
15 water use, if demand is more than 3.1, will be necessary,
16 right?

17 MR. WALKER: Yes.

18 MR. OSIAS: Some sharing formula will be needed,
19 correct?

20 MR. WALKER: That would be one method of dealing with
21 it, yes.

22 MR. OSIAS: Would another method be for the IID itself
23 to acquire land that it can take in and out of production in
24 order to cure any use above the cap?

25 MR. WALKER: Yeah, that would be a method.

1 MR. OSIAS: Do you like that method better?

2 MR. WALKER: I do, yes.

3 MR. OSIAS: Deciding which land to buy, you think IID
4 should look at the historical use on that land?

5 MR. WALKER: I suspect they would have to.

6 MR. OSIAS: Because they need to have a sense of what
7 the history was on that property so they could select the
8 most prudent property, correct?

9 MR. WALKER: Need to know the water use, yes.

10 MR. OSIAS: So they could use the history for that
11 purpose?

12 MR. WALKER: They would have to look at water use.
13 However they arrived at the water use for that piece of
14 property would have to be determined.

15 MR. OSIAS: You have been on the Water Conservation
16 Advisory Board for ten years, right?

17 MR. WALKER: Approximately, yes.

18 MR. OSIAS: Do you recall that there were several study
19 groups looking into this discussion we just had about how to
20 set a baseline?

21 MR. WALKER: Yes.

22 MR. OSIAS: Whether to have a baseline, correct?

23 MR. WALKER: That's correct.

24 MR. OSIAS: How to live under a cap, remember that?

25 MR. WALKER: Yes.

1 MR. OSIAS: I think there was a multiple recommendation
2 came out of the Water Conservation Advisory Board?

3 MR. WALKER: Well, there were multiple recommendations
4 made to the Water Conservation Advisory Board, but only one
5 recommendation came out of it.

6 MR. OSIAS: Just about everything under the sun was
7 tested?

8 MR. WALKER: Many different options, yes.

9 MR. OSIAS: Would it be fair to say that not one of
10 those was absolutely fair to every single farmer in the
11 Valley?

12 MR. WALKER: Quite frankly, I don't recall the
13 technicalities of all of them. I don't think I can answer
14 that question without going back through the information
15 regarding that.

16 MR. OSIAS: And some farms have paid a water
17 availability charge even when they haven't farmed, right?

18 MR. WALKER: That is my understanding.

19 MR. OSIAS: So if you use history, they would have a
20 zero allocation, correct?

21 MR. WALKER: Yes.

22 MR. OSIAS: Some of those farmer owners think that
23 would be unfair?

24 MR. WALKER: I would assume they would.

25 MR. OSIAS: Some farmers double crop more than others,

1 correct?

2 MR. WALKER: Yes.

3 MR. OSIAS: Their use is naturally higher than if they
4 doubled cropped than if they single cropped?

5 MR. WALKER: Yes.

6 MR. OSIAS: If you gave everyone the average in the
7 District, they would think that was unfair?

8 MR. WALKER: I would think so, yes.

9 MR. OSIAS: Have you heard the District discuss the
10 farm unit approach to this problem?

11 MR. WALKER: Yes, I have.

12 MR. OSIAS: That allows the farmer to aggregate all of
13 it is headgates into one farming unit?

14 MR. WALKER: Yes.

15 MR. OSIAS: That is an attempt to alleviate some of
16 this unfairness?

17 MR. WALKER: I suppose that is one way of discussing
18 it. I haven't heard it discussed at great length. I don't
19 know to what extent it is being considered. My general
20 understanding is that that would be the case.

21 MR. OSIAS: The Farm Bureau plan hasn't yet been
22 rejected by the District, has it?

23 MR. WALKER: Not to my knowledge.

24 MR. OSIAS: You are in favor of that one?

25 MR. WALKER: I am, yes.

1 MR. OSIAS: It focuses on reduction on tailwater?

2 MR. WALKER: That is one of aspects, yes.

3 MR. OSIAS: Which seems to be, given the earlier
4 question, from an efficiency perspective that is an easy way
5 of monitoring?

6 MR. WALKER: Yes.

7 MR. OSIAS: Thank you.

8 CHAIRMAN BAGGETT: San Diego.

9 ---oOo---

10 CROSS-EXAMINATION OF LARRY GILBERT PANEL

11 BY SAN DIEGO COUNTY WATER AUTHORITY

12 BY MR. SLATER

13 MR. SLATER: Afternoon, gentlemen. Hopefully I will be
14 brief here. I want to cover a couple items.

15 You can answer this collectively.

16 Do you all live in Imperial County?

17 THE COURT REPORTER: I need single answers.

18 MR. SLATER: Mr. Cox, do you live in Imperial County?

19 MR. M. COX: Yes, I do. I live in Brawley.

20 MR. SLATER: Mr. Gilbert, do you live in Imperial
21 County?

22 MR. GILBERT: Yes, I do.

23 MR. SLATER: And Mr. Walker?

24 MR. WALKER: Yes.

25 MR. SLATER: Mr. Cox, do you live within the boundaries

1 of the Imperial Irrigation District?

2 MR. M. COX: Yes, I do.

3 MR. SLATER: Mr. Gilbert, same question.

4 MR. GILBERT: Yes.

5 MR. SLATER: Mr. Walker, same question.

6 MR. WALKER: Yes.

7 MR. SLATER: Mr. Cox, are you registered to vote?

8 MR. M. COX: Yes, I am.

9 MR. SLATER: Mr. Gilbert?

10 MR. GILBERT: Yes.

11 MR. SLATER: And Mr. Walker.

12 MR. WALKER: Yes.

13 MR. SLATER: Mr. Gilbert, I take it from your written
14 testimony submitted that you are in favor of the Farm Bureau
15 conservation plan; is that correct?

16 MR. GILBERT: Yes, I am. I think it has a number of
17 features that are acceptable to a lot of people.

18 MR. SLATER: And have you tried to communicate that to
19 IID?

20 MR. GILBERT: Yes, I have.

21 MR. SLATER: Mr. Cox, do I take it also that you are in
22 favor of the Farm Bureau conservation plan?

23 MR. M. COX: Yes, I am.

24 MR. SLATER: Have you communicated that to IID?

25 MR. M. COX: Yes, I have.

1 MR. SLATER: Mr. Walker, same question.

2 MR. WALKER: Yes.

3 MR. SLATER: And you have communicated it to IID?

4 MR. WALKER: No, I haven't.

5 MR. SLATER: Mr. Gilbert, can I call your attention to
6 a document which is Gilbert 3 and identified as Farm Bureau
7 Conservation Plan and have you looked at Page 3?

8 MR. GILBERT: I have it.

9 MR. SLATER: Is it your testimony that a proper
10 intensive payment would be approximately \$15 per acre-foot
11 of water delivered?

12 MR. GILBERT: No, this does not say that. This uses
13 that number as an example to show about how much that
14 incentive payment would amount to for an 80-acre field.

15 MR. SLATER: So it is not an endorsement of that
16 incentive, it is just an example?

17 MR. GILBERT: It's not an endorsement of that amount as
18 an incentive. It is an example to show the approximate
19 amount that would be generated to a farmer, might be
20 available to a farmer, if that were the percentage. It does
21 endorse the use of an incentive payment and the payment
22 based on the amount of water that was used, but does not
23 endorse the number.

24 MR. SLATER: Thank you.

25 Mr. Gilbert, do you agree with the testimony of Mr. Du

1 Bois that land with water is more valuable than land without
2 water?

3 MR. GILBERT: In Imperial Valley, yes.

4 MR. SLATER: Do you also agree with his testimony that
5 land with a more reliable supply is worth more than land
6 with an unreliable supply?

7 MR. GILBERT: Yes, I would agree with that in our
8 area.

9 MR. SLATER: Mr. Cox, do you also agree with Mr. Du
10 Bois concerning the value of land with a reliable water
11 supply being more valuable than land without a reliable
12 water supply?

13 MR. M. COX: Yes, I do.

14 MR. SLATER: Mr. Walker, same question.

15 MR. WALKER: From a farming standpoint, yes, I would
16 agree.

17 MR. SLATER: Mr. Gilbert, to the best of your
18 knowledge, during the years between 1987 and 1992, did the
19 Imperial Irrigation District reduce water deliveries to its
20 customers within its boundaries?

21 MR. GILBERT: You mean reject some of their orders?

22 MR. SLATER: Strike that.

23 During the years 1987 through 1992, did the Imperial
24 Irrigation District ration water within its boundaries?

25 MR. GILBERT: Not to my knowledge.

1 MR. SLATER: Mr. Cox, same question.

2 MR. M. COX: I don't think so. I don't recall
3 Imperial.

4 MR. SLATER: And Mr. Walker.

5 MR. WALKER: I don't think so, if my understanding of
6 rationing is the same one you have.

7 MR. SLATER: Did you all hear Mr. Du Bois' testimony
8 indicating he didn't think that there had been rationing
9 since the Hoover Dam was completed?

10 Mr. Cox, do you agree with that testimony to the best
11 of your knowledge?

12 MR. M. COX: I believe there was one year that the
13 water users were asked by the Bureau to reduce their use of
14 water by 10 percent, and that the District asked the water
15 users to try to reduce their water use by ten percent. I
16 don't know what year that was. It was definitely subsequent
17 to Hoover Dam.

18 MR. SLATER: Within the last ten years?

19 MR. M. COX: I don't think they required -- within the
20 last ten years? No, I believe it was prior to that. Maybe
21 the late '60s.

22 MR. SLATER: Mr. Walker.

23 MR. WALKER: I recall at the time Lake Powell was being
24 filled that there was some discussion of less water supply,
25 but I have no details.

1 MR. SLATER: For time reference, the time at which
2 Lake Powell was being filled was when?

3 MR. WALKER: I don't recall.

4 MR. SLATER: Mr. Gilbert, in your experience has IID
5 ever denied an order that you have made other than for
6 temporary scheduling problems, such as the one that Mr. Du
7 Bois mentioned?

8 MR. GILBERT: Other than during the period that the two
9 other gentlemen referenced, which I think was 1964, where,
10 if they decided that we were not using our water properly,
11 there were times that we had to go back and start over with
12 another order, but otherwise no.

13 MR. SLATER: When you say not using water properly,
14 what would that mean?

15 MR. GILBERT: They had a kind of hair-brained scheme
16 where they would measure our tailwater. And if it was over
17 10 percent at the time they measured it, they would go
18 reduce the delivery. It was very contentious.

19 MR. SLATER: When was that?

20 MR. GILBERT: I think it was 1964.

21 MR. SLATER: Mr. Gilbert, are you aware of any claims
22 made by the Bureau of Reclamation that IID is wasting water?

23 MR. GILBERT: I don't know whether they are claiming we
24 are wasting it, but they seem to be threatening us that they
25 are going to examine us very closely. And that if our use

1 is found to be unsatisfactory they would take action against
2 us.

3 MR. SLATER: What about the Coachella Valley Water
4 District, have they made similar claims?

5 MR. GILBERT: I have heard that they have made threats
6 that if we don't use it appropriately it should belong to
7 them.

8 MR. SLATER: Mr. Gilbert, it would be a benefit, would
9 it not, to resolve those claims short of going to litigation?

10 MR. GILBERT: Well, it depends on what we have to give
11 up in order to get that settlement.

12 MR. SLATER: Mr. Gilbert, if the settlement resolved in
13 IID maintaining its certainty and its reliability in its
14 water supply, all things else being equal, that would be a
15 good result, wouldn't it?

16 MR. GILBERT: Sure. If they just go away and say that
17 our supply is all right. That would be great.

18 MR. SLATER: And if Imperial -- Strike that.

19 It's a beneficial thing, is it not, for a farmer to
20 order a water supply and Imperial to deliver it on demand?

21 MR. GILBERT: Yes.

22 MR. SLATER: The fact that farmer can count on a future
23 delivery occurring is a good thing, correct?

24 MR. GILBERT: The more you can count on it, the better
25 it is.

1 MR. SLATER: The more reliable the better it is?

2 MR. GILBERT: Yes. And the more timely you can see
3 that, the better.

4 MR. SLATER: And a settlement that improves reliability
5 is, therefore, all things being equal, a good thing?

6 MR. GILBERT: All things being equal, if you can gain
7 that without giving up something, you have done something
8 well.

9 MR. SLATER: Mr. Cox, all these being equal, if a
10 settlement brings improved reliability, that is a good thing
11 for Imperial and Imperial farmers, correct?

12 MR. M. COX: Yes. I am not sure a hundred thousand
13 acre-feet at \$50 an acre-foot is a good thing.

14 MR. SLATER: But assume that pricing -- assume that a
15 proper price was being paid for the water, increased
16 reliability and certainty is a good thing for Imperial and
17 its farmers, correct?

18 MR. M. COX: I will grant that assumption.

19 MR. SLATER: Mr. Walker.

20 MR. WALKER: I would -- go ahead.

21 MR. SLATER: Assuming that IID is being paid a fair
22 price for its water, a settlement that results in increased
23 reliability and certainty for IID and its customers is a
24 good thing, correct?

25 MR. WALKER: I would substitute maintains reliability

1 for increased. Our reliability has been pretty good. I am
2 just hoping nothing happens to decrease our reliability.

3 MR. SLATER: Fair enough. With that, I won't ask any
4 more questions.

5 Thank you.

6 CHAIRMAN BAGGETT: Defenders of Wildlife?

7 MR. FLETCHER: We'll waive.

8 CHAIRMAN BAGGETT: County of Imperial.

9 ---oOo---

10 CROSS-EXAMINATION OF LARRY GILBERT PANEL

11 BY COUNTY OF IMPERIAL

12 BY MR. ROSSMANN

13 MR. ROSSMANN: Gentlemen, I came back from the session
14 a little bit late. If I'm repeating a question that has
15 been already asked, forgive me. I wanted to make sure that
16 both Mr. Walker and Cox certified their written testimony
17 under penalty of perjury.

18 Are you both -- let me start with Mr. Walker.

19 Do you certify your written testimony as true under
20 penalty of perjury?

21 MR. WALKER: I do.

22 MR. ROSSMANN: And Mr. Cox?

23 MR. M. COX: I do.

24 MR. ROSSMANN: Thank you, sir.

25 Sorry, Mr. Chair.

1 The definition of fallowing is one that all three of
2 you spoke to. I direct this question to Mr. Gilbert.

3 Sir, I'm going to read you from the California Water
4 Code a definition, and I will place this in front of you so
5 that you can refer to it. And this is the definition in the
6 Water Code which allows water appropriated for irrigation
7 purposes not used as a result of temporary land fallowing
8 or crop rotation, the reduced usage shall be deemed water
9 conservation for purposes of that section.

10 And then this definition of land fallowing and crop
11 rotation appears. Land practices involving the nonuse of
12 water used in the course of normal and customary
13 agricultural production to maintain or promote the
14 productivity of agricultural land.

15 And let me leave that in front of you with my paper
16 clip at that place. I want to assure, sir, this is an
17 educational query on my part.

18 Is that an acceptable definition? And if not, could it
19 be improved upon and how would you improve it?

20 MR. GILBERT: Let me take a moment to read it over
21 again. Start at the beginning of that paragraph?

22 MR. ROSSMANN: If I can approach you, I will just show
23 you the definition I am looking at.

24 MR. SLATER: Are you referring to Water Code Section
25 1011?

1 MR. ROSSMANN: That is correct, 1011.

2 MR. SLATER: Chairman, while he is considering an
3 answer, I will pose an objection on the basis that it is
4 unclear whether he is asking for a legal conclusion
5 regarding the adequacy of the definition. If counsel could
6 describe with some specificity what --

7 CHAIRMAN BAGGETT: That is fair.

8 MR. ROSSMANN: I think that is fair, request for
9 clarification. But I will reiterate my point, sir. If the
10 Legislature hasn't been as careful as these gentlemen would
11 like it to be in defining temporary fallowing, I am truly
12 offering Mr. Gilbert, and I will shortly ask his colleagues,
13 an opportunity to improve upon that definition that might be
14 useful to this Board. And if I have asked you a question
15 that you can't answer at this time, that is a fair answer.

16 MR. GILBERT: I have looked it over a little more
17 carefully. And I don't see a problem with the
18 definition. I see a problem with using the definition as a
19 prohibition, because it says water used in the course of
20 normal and customary agricultural production. And to be
21 able to define what is done in the course of normal and
22 customary agricultural operations in a way that you could
23 prohibit someone from doing it, seems to me to be not
24 something you can attain.

25 MR. ROSSMANN: No suggestion for improvement at this

1 time?

2 MR. GILBERT: I think that you might after the fact be
3 able to ascertain in a lot of instances that it was done,
4 but I don't think you could define normal and customary
5 agricultural production sufficiently well to be able to use
6 that as a prohibition for which someone would be penalized.

7 MR. ROSSMANN: Thank you, sir.

8 MR. GILBERT: You're welcome.

9 MR. ROSSMANN: Since you have a panel, I guess I will
10 ask Mr. Walker if you wish to add to your answer?

11 MR. WALKER: Not at this time. I really didn't have an
12 opportunity to study it very carefully.

13 MR. ROSSMANN: Yes, sir. That is fair.

14 Mr. Cox.

15 MR. M. COX: My only comment is on the inclusion of the
16 word "temporary." It brings to mind that this was a
17 discussion regarding the reason that the Palo Verde
18 Metropolitan transfer limits the parcel to being fallowed to
19 three years has to do with the land being reclassified,
20 using its prime classification. They don't mention a term
21 on this as far as the length of time you can call it
22 temporary.

23 MR. ROSSMANN: Yes, sir. I was going to ask that
24 question because in your testimony I believe on Page 3, at
25 least facsimile Page 3, it might actually be Page 2 of your

1 text. I believe I saw the phrase that if land is fallowed
2 for more than three years, it will lose its prime farmland
3 categorization.

4 And, sir, when I say Page 3, I am looking at the little
5 tabs at the top that define the fax page.

6 CHAIRMAN BAGGETT: It's really awkward having a panel
7 with no attorney. If you could focus the questions on
8 nonlegal questions. I think it was pointed out that we have
9 three nonattorneys and you are asking them to interpret a
10 statute. I guess I will take it upon myself.

11 MR. ROSSMANN: That is fair, sir. This is truly a
12 factual inquiry. That is, I guess what I am asking the
13 witness is his understanding. Is that a legal requirement
14 that land that is fallowed for more than three years will
15 lose --

16 MR. SLATER: Objection. Calls for legal conclusion.

17 CHAIRMAN BAGGETT: I would sustain that. These are not
18 simple legal questions, and there's great difference among
19 legal scholars in this field, more or less. I would
20 sustain.

21 MR. ROSSMANN: Mr. Gilbert, I want to make clear, I
22 think my notes show that at one point you refer to the Farm
23 Bureau Conservation Plan as Exhibit 4, and it really is
24 Exhibit 3 to your exhibits; is that correct, sir?

25 MR. GILBERT: Yes, it should be marked as Exhibit 3.

1 CHAIRMAN BAGGETT: These have to be limited to the
2 questions just asked.

3 MR. GILBERT: Yes.

4 Thank you.

5 If you were trying to obtain water or the right to use
6 water and you were considering different parcels of
7 farmland, would you base your valuation of those parcels
8 exclusively on their past usage?

9 MR. WALKER: I don't know that I understand exactly
10 what you are driving at.

11 MR. GILBERT: In analyzing the amount of water that you
12 might obtain from those parcels, is past usage the only
13 thing that you would consider in estimating how much water
14 you might obtain from those parcels?

15 MR. WALKER: I would assume so, yes.

16 MR. GILBERT: That is the only measure?

17 MR. WALKER: That would certainly be the main one, I
18 would think.

19 MR. GILBERT: The main one?

20 MR. WALKER: Yes.

21 MR. GILBERT: If an allocation method were considered
22 and you considered your own past practices and it was not
23 very favorable to you, you mentioned that you might consider
24 that as unfair or a rancher might consider it as unfair.
25 Would it necessarily be unjust if the farmer considered it

1 unfair?

2 MR. WALKER: Not necessarily. It would depend entirely
3 on the circumstances, situation.

4 MR. GILBERT: There might be a difference what was
5 unjust and what a farmer considered unfair?

6 MR. WALKER: That is possible. I think what my
7 neighbor might consider unfair and unjust I might think was
8 perfectly fine.

9 MR. GILBERT: Thank you.

10 That is all.

11 CHAIRMAN BAGGETT: Recross.

12 Mr. Slater, do you have any?

13 MR. SLATER: Waive.

14 MR. ROSSMANN: No, sir.

15 CHAIRMAN BAGGETT: Anybody else? Last call.

16 With that I think we already went out of order.

17 Any questions.

18 You have already moved to enter your exhibits into
19 evidence.

20 MR. GILBERT: Yes.

21 CHAIRMAN BAGGETT: Do we have any further objections at
22 this point?

23 MR. SLATER: No objection.

24 MR. RODEGERDTS: I am not sure that I ever heard Mr.
25 Gilbert actually say that his entire proposed testimony was

1 under penalty of perjury. Referenced exhibits, not actually
2 his testimony.

3 MR. GILBERT: I would declare that my entire testimony
4 and exhibits were true and accurate to the best of my
5 knowledge under penalty of perjury.

6 CHAIRMAN BAGGETT: You would ask that they be entered
7 into the record?

8 MR. GILBERT: I ask that they be entered into the
9 record.

10 CHAIRMAN BAGGETT: With no objections they so are.
11 With that --

12 MR. OSIAS: Can we go over the schedule?

13 CHAIRMAN BAGGETT: The schedule, 9:00 tomorrow here.
14 Begin Phase II.

15 MR. OSIAS: Two things. I assume we will start that
16 with opening statements by all the participants in Phase
17 II.

18 CHAIRMAN BAGGETT: Normally I'd just like to do the
19 same, do the party. Do IID first, do your opening
20 statement, do your two witnesses.

21 MR. OSIAS: So, the opening statements are staggered?

22 CHAIRMAN BAGGETT: Right.

23 MS. DIFFERDING: I think it might make sense to have
24 those parties who aren't presenting a case in chief give
25 their statements in the beginning and then start with

1 Imperial.

2 CHAIRMAN BAGGETT: I am open to the preference.
3 Normally we do the opening statements and then the witnesses
4 and just move through one party at a time.

5 MR. OSIAS: Mr. Chairman.

6 CHAIRMAN BAGGETT: If there is a --

7 MR. OSIAS: Let me just -- there is no -- maybe it's
8 like a baseline, there is no perfect way to do this.

9 CHAIRMAN BAGGETT: I understand. There is no hearing
10 quite like this either.

11 MR. OSIAS: One of the concerns that I have is the
12 privilege of going first both in case in chief and then in
13 cross-examination and combine that with the breadth that
14 people are allowed to raise on cross which is beyond the
15 breadth.

16 CHAIRMAN BAGGETT: I understand that. I was going to
17 propose we reverse -- I was going to reverse the order of
18 cross-examination for Phase II.

19 MR. OSIAS: I think that will solve my problem. I was
20 hoping to hear the case in chief, opening statement at
21 least, what I could be thinking about to get ready for
22 cross. If I hear them and what everybody else does, I think
23 that will take care of it.

24 CHAIRMAN BAGGETT: After they cross-examine your
25 witness, you get to go last on your own. I would propose

1 reverse order just out of fairness. I know past hearing
2 officers have drawn straws for order of cross-examination.
3 I feel here we've got two substantially different groups and
4 so I think we just mix it up that way.

5 MR. OSIAS: The second request is we have one witness
6 for Phase II who cannot make it tomorrow, but can be here
7 first thing Wednesday. Not the two EIR experts, but Dr.
8 Smith who has ten or 15 minutes on following consequences.
9 So if we should finish with Dr. Eckhart and Ms. Harnish, my
10 request would be we move to San Diego or some other witness
11 and let Dr. Smith testify first thing Wednesday morning. He
12 cannot get here.

13 CHAIRMAN BAGGETT: The other option is just let San
14 Diego go first with their case in chief and two witnesses.
15 Does that present a problem?

16 MR. OSIAS: That is no problem for me.

17 MR. SLATER: We are scrambling our witnesses to get
18 them here tomorrow by noon. We will have one in tonight,
19 but the second witness is unlikely to be available until
20 afternoon tomorrow.

21 MR. OSIAS: Dr. Smith is a discrete subject area from
22 Dr. Eckhart and Ms. Harnish.

23 CHAIRMAN BAGGETT: I recognize that. I am sure we will
24 have some questions for Dr. Smith. I do welcome the
25 opportunity. I have been saving them.

1 Trying to think of how we can -- I guess my goal would
2 be to get through IID/San Diego, the Tribes, Salton Sea
3 Authority and the Regional Board in the next two days even
4 if we have to go some longer hours so that we can come back
5 and start with a clean slate with the 12 environmental
6 defense -- Sierra Club, Audubon, and et al. They have 12
7 witnesses.

8 Like I said, I would like to start fresh. It depends
9 on how the cross-examination goes. I recognize that. I
10 would certainly -- I guess at least something we should
11 strive for. We might go later tomorrow night that is the
12 message.

13 Is that a problem for anyone?

14 MR. ROSSMANN: Your Honor, we did go -- we mixed in
15 Phase I, where we took some witnesses out of order because
16 of subpoenas, and it worked fine. As a third party, so to
17 speak --

18 CHAIRMAN BAGGETT: If there is no objection, I think we
19 can accommodate that. We'll start out with IID's opening
20 statement, your first two witnesses, move to San Diego.
21 Maybe we'll get through that tomorrow. We'll see. Give it
22 a shot. And start with Dr. Smith the next morning, and
23 follow that by the Tribes.

24 MS. DIFFERDING: Are we going to be in
25 cross-examination of IID's first panel --

1 CHAIRMAN BAGGETT: That is how we have been doing it so
2 far. Move through the whole panel, but we will reverse the
3 order of cross-examination in the second phase. Give the
4 environmental constituents the opportunity to go first on
5 cross-examination.

6 MR. FLETCHER: Everything regarding Mr. Osias' request
7 is fine. The first request I want to make sure I understand
8 it. IID will go first with their opening statement and then
9 we will cross-examine in reverse order.

10 CHAIRMAN BAGGETT: They will do their witnesses and
11 then we will start out at the bottom. That will be starting
12 out with the Farm Bureau and moving --

13 MR. FLETCHER: Just wanted to make sure.

14 CHAIRMAN BAGGETT: You are still in the middle.

15 MR. FLETCHER: The other thing is it sounds like it is
16 going to work like this if it is an accord, but I did tell
17 you at the end of last week that I'd come back to you with
18 responses from the environmental parties to the idea of
19 holding our case until the 12th and the 13th. All the
20 parties are very appreciative. It looks like it will work
21 out that way. I wanted to convey that.

22 Also, we have some similar issues regarding witness
23 scheduling. We have some people who are available the 13th,
24 but I expect that we can most productively deal with that at
25 the time.

1 CHAIRMAN BAGGETT: If you contact myself or Ms.
2 Differding, give us some notice. It just helps a lot so
3 other parties can have a notice so they know the witnesses
4 are going to be changed. Even a day ahead makes a
5 difference, so people can plan tonight that Dr. Smith is not
6 here tomorrow so they can spend their time on others.

7 There is a lot of testimony to read, overwhelming.

8 MR. FLETCHER: I prefer to have the other parties do
9 their own witnesses, but as to mine, Defenders' witnesses,
10 the only request we have that Bill Karr, our fishing,
11 recreational fishing witness, is available generally through
12 the 13th and 14th, but he is preparing for a trip. So we
13 can wait until that time, but we may have to squeeze him in
14 out of order.

15 CHAIRMAN BAGGETT: He should be on the first day.

16 MR. FLETCHER: Yes. We shouldn't have any problem at
17 all.

18 CHAIRMAN BAGGETT: I would hope that we can get through
19 your first panel. I guess, maybe it is something we can --
20 let's not resolve now. We can talk about tomorrow at the
21 end of the day. I don't know how we want to deal with your
22 panels. There are so many, five panels. I guess we should
23 just do one, cross-examine that panel, otherwise we are
24 going to end up with a logistical nightmare. I can see it.

25 I think unless there is objection, maybe we'll just

1 resolve that now. We will intend to do panel one of the
2 environmental witnesses, cross-examine, redirect, recross.
3 Be done with them and dismiss them, basically, and come
4 back to panel two.

5 MR. FLETCHER: I think NWF may need to move their panel
6 up front, but that would be as a panel.

7 CHAIRMAN BAGGETT: If you could contact them or tell
8 us.

9 MR. FLETCHER: I think they will be here tomorrow.

10 CHAIRMAN BAGGETT: Anything else?

11 We have a schedule. I just E-mailed. I am trying to
12 arrange it so we can have all five the 13th, that week, I
13 would like to have them all at the Bonderson Building.
14 Right now we are starting out in the Bonderson Building for
15 two days, back to City Hall for a day, back here for half a
16 day, and back to Bonderson.

17 It would be nice if we can just do all five days and
18 lock up everything, lock up the stuff. So we are working on
19 that. The dates are firm and times.

20 We are done with Phase I and we will get back tomorrow
21 to start Phase II.

22 Thank you.

23 (Hearing adjourned at 3:30 p.m.)

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